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A TREATISE

ON

GENERAL PRACTICE

CONTAINING

RULES AND SUGGESTIONS

FOR THE

WORK OF THE ADVOCATE

IN THE

PREPARATION FOR TRIAL, CONDUCT OF THE TRIAL AND PREPARATION FOR APPEAL

BY

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AND

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Authors of a Treatise on the Law of Roads and Streets and of a Treatise on Appellate Procedure

In Two Volumes

VOLUME I

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PREFACE.

THIS treatise is founded on the book of the authors called "The Work of the Advocate." That book has been out of print for more than five years. Yielding to the request of many of our brethren who kindly received our book, we have enlarged it into a treatise on general practice. In doing this we have carried our work far beyond the scope of the former title, and for that reason have adopted a more comprehensive one.

Our book, as it is now enlarged, covers the entire work of the advocate in the preparation and trial of causes. It begins with the first steps in gathering the facts, and follows the proceedings through the preparation for trial, the conduct of the trial and the preparation for appeal. Although we have enlarged the plan of the work, we have not departed from our original purpose to treat of matters not usually discussed in books, and our book covers many subjects not touched by other authors. We have, however, necessarily treated some of the subjects considered by Judge Thompson in his admirable treatise on trials. This we have done because the scope of our work required it, and not with any hope or thought of improving upon Judge Thompson's excellent work, although we have collected very many later cases, and have, also, presented some of the topics in a different light as well as from a different point of view.

The preface to "The Work of the Advocate" we retain, for while the changes made in the book are many, and carry it far beyond the limits there defined, yet so much of

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the earlier book remains that the preface is not irrelevant or inappropriate. To what was said in that preface little need be added. We have endeavored to state principles, and to illustrate their practical application by copious references to the adjudged cases. We have not given attention to local rules nor dwelt upon statutory provisions. We have dealt with general principles which prevail, with rare exceptions, throughout the whole country, and have gathered cases from all the courts. We have found conflict among the cases, and have freely expressed our own convictions wherever we have found diversity of judicial opinion, and, in some instances, have ventured to oppose the numerical weight of cases, holding ourselves bound to abide by principles rather than precedents.

Byron K. Elliott.
William F. Elliott.

Indianapolis, September 1, 1894.

PREFACE

TO

THE WORK OF THE ADVOCATE.

MANY years ago the elder of the authors, impressed by a remark of Mr. Chitty, became a close observer of the different methods pursued by advocates in the trial of causes. The scrutiny, as the investigation progressed, went beyond the facts open to the observer's unaided perception, and led to an inquiry into the habits of thought of jurymen. The position of the inquirer, at the time—that of trial judge—was such as to enable him to freely converse with the jurors and draw from them their opinion of the methods of the different advocates who came before them. The result of the investigation, both as to the method of examining witnesses and as to the course of argument by which jurors are influenced, are given in the pages which follow. It may, therefore, be justly said that as to these subjects, at least, this book is founded mainly on experience, although many books have been consulted in its preparation.

It has been the intention and the hope of the authors to give to the profession a book that shall be of service to the advocate in the actual work which he must do. It has been our purpose to treat of matters not usually discussed in works on pleading and practice. We have, as we believe, treated more of the things that abide in the unwritten practice than of those which are found in books. We hope that the young advocate will find suggestions of sub-

stantial value, and we even venture to hope that, while the advocate of experience may not find much in our pages that is new or instructive, he may, at least, find something of interest.

In collecting authorities we have regarded quality rather than numbers, and have referred to such cases as seemed best to illustrate the points upon which they are cited. We have examined many reports, and from the great number of cases have selected the latest and the most instructive. We have endeavored to make the book one that will be serviceable in actual practice—one to which the advocate may turn for instruction and information in the hurry and pressure of actual work. To that end we have made such suggestions, stated such rules and collected such authorities as bear upon the questions that most frequently arise in the preparation and trial of causes.

It is not without fear of censure that, in this day of many books, we submit our work to our brethren. We bespeak their charitable judgment, and, in mitigation of such errors as we may have fallen into, we plead that, for the most part, our path is one not much traveled by book-makers, and that it lies through fields of difficulty. If the book shall be of help to the young advocate we shall not regret the labor we have given it, nor greatly suffer from the censure its faults may bring upon us. We are bold enough to hope that the gratitude of the young advocate, whom it has been our leading purpose to help, will outweigh the censure of those who may think that we have added to the number of books without adding anything of value to legal literature.

BYRON K. ELLIOTT.

WILLIAM F. ELLIOTT.

Indianapolis, Indiana, August, 1888.

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Abbe v. Marr, 14 Cal. 210, 322, 1196
Abbett v. Chicago, etc., R. R. Co., 30 Minn. 482, 548
Abbey v. Mace, 19 N.Y. Supp. 375, 1081
Abbey Homestead Assn. v. Willard, 48 Cal. 614, 1043
Abbot v. Abbot, 51 Me. 575, 34
Abbott v. Abbott, 51 Me. 575, 533
Abbott v. Chaffee, 83 Mich. 256, S. C. 47 N. W. R. 216, 712
Abbott v. Coburn, 28 Vt. 663, S. C. 67 Am. Dec. 735, 314
Abbott v. Dutton, 44 Vt. 546, S. C. 8 Am. R. 394, 605
Abbott v. Keith, 11 Vt. 525, 586
Abbott v. L'Hommedieu, 10 W. Va. 677, 176
Abbott v. Sheppard, 44 Mo. 273, 463
Abbott v. Zeigler, 9 Ind. 511, 1183
Abdil v. Abdil, 26 Ind. 287, 443, 610
Abel v. Opel, 24 Ind. 250, 399
Abell v. Simpson, 49 Md. 318, 474
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THE WORK OUT OF COURT.

CHAPTER I.

LEARNING AND PREPARING THE FACTS.

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§ 1. **Value of preparation.**—Preparation is the foundation of success in advocacy. Neither genius nor talent, neither tact nor cunning, can equip an advocate to try a cause as it is the duty of advocates to try causes, without a foundation well laid by thorough and complete preparation. The first step is to acquire a knowledge of the facts.[1] It is not enough to obtain a knowledge of them in outline; they must be known in their breadth and depth and in their relation to each other and to the ruling principles of law.[2] Cicero says: "What Socrates

[1] "Master your facts and act only when you are cool, are the maxims of Lord Justice Lindley for the young practitioner." 23 Am. Law Review, 579.

[2] Sir Charles Russell's description of his mode of working is interesting and instructive. "If you ask me," said this accomplished advocate in answer to a question addressed to him by a reporter, "to reduce the common habit of my life to a formula, I will tell you that I have only four ways of preparing my work. First. I do one thing at a time, whether it is reading a brief or eating oysters, concentrating whatever faculties I am endowed with upon what I am doing at the moment. Secondly. When dealing with complicated facts, to arrange the narrative of events in the order of date—a simple rule not always acted upon, but which enables you to unravel the most complicated story, and to see the relation of one set of facts to another set of facts. My third rule is never to trouble about authorities or case law supposed to bear on a particular question until I have accurately and definitely ascertained the precise facts. This last rule is one which the professional man will appreciate better, perhaps, than the layman. It is not only valuable—I may say this as I did not invent it—but very interesting to me, individually, as I got it from Lord Westbury when a young man at the bar and pleading before him. I was plunging into a citation of cases, when he very good-naturedly pulled me up and said: 'Mr. Russell, don't trouble yourself with the authorities until we have ascertained with precision the facts, and then we shall probably find that a number of the authorities which seem to bear some relation to the case have really nothing important to do with it.' My fourth rule is to try and apply the judicial faculty to my own case in order to determine what are its strong and weak points, and in order to settle in my own mind what is the turning point in the case. This method enables you to discard irrelevant topics and to mass your strength on the point on which the case hinges." 39 Alb. Law Journal, 304.

used to say, that all men are sufficiently eloquent in that which they understand, is very plausible but not true. It would have been nearer the truth to say that no man can be eloquent on a subject that he does not understand."[1] No man can be strong where his knowledge of his subject is feeble. Preparation alone supplies the knowledge which makes trial lawyers strong.[2] Biographers of advocates, like biographers of military heroes, sometimes take up the pen of the romancer, and, to magnify the man of whom they write, invent pleasant fictions. It is to this class of biographers that legal literature owes many stories of verdicts won, as they say, "by a flash of wit or a torrent of eloquence." There is more of rhetorical flourish than of sober truth in these stories. For the most part, legal controversies are not fields for display, but fields for hard work. The power of the advocate does, indeed, often carry the verdict, but the foundation of this power is preparation.

§ 2. **Genius of success.**—The genius of success in the contests of the forum is the genius of hard work. The man who goes into the contests of the forum without careful preparation, relying on his wit or his eloquence, will go "sounding on a dim and perilous way." "Diligence," Cicero maintains, "is capable of effecting almost everything,"[3] and at no point in advocacy is diligence more powerful than at the outset. Diligence in preparation is, to borrow again from Cicero, the one virtue "in which all other virtues are comprehended."[4] Speeches that are lauded as remarkable examples of extemporaneous speaking are almost always found, when the truth is known, to be the result of careful and laborious preparation. Webster's reply to Hayne was not the result of a night's deliberation, but, as he himself said, was the product of long years of thought. If ever a man was gifted with genius great enough to make him disdain the aid of preparation, it was Daniel Webster, and yet he would not speak without preparation. The

[1] Orators and Oratory, Bk. I, xiv.

[2] "Young man," said Daniel Webster to the preacher, "there is no such thing as extemporaneous acquisition."

[3] Orators and Oratory, Bk. II, xxxv.

[4] Orators and Oratory, Bk. II, xxxv.

secret of his success is disclosed in the well-known anecdote which represents him as saying to a friend: "If there be so much weight in my words as you represent, it is because I do not allow myself to speak on any subject until my mind is thoroughly imbued with it."

§ 3. **Study of the case.**—Those consummate masters of forensic oratory, Cicero and Quintilian, with strong words, often repeated, impress upon the advocate the necessity of a thorough study of the causes he undertakes.[1] This study is even more important now than when they wrote, for men in these days look more to the words of the witnesses than to those of the advocates. In theory the truth comes from the witnesses, however it may be in fact, but in Rome this was scarcely so, even in theory. The study of the facts is not so much for the sake of the argument as these great authors teach, for it is essential in other particulars even more important. Preparation is not for the sake of the argument alone, but for the sake of the case, although it gives a strength and power to the argument that without it would be utterly wanting. Mr. Harris, employing the nomenclature of the turf, says: "In five cases out of six I would back the advocate and not the case."[2] But this, we venture to affirm, is not true of advocacy in America, whatever may be said of it as applied to the English practice, where the attorneys, and not the advocates, prepare the cases. The only safe rule for an advocate is to be sure that he has constructed a strong theory, and is provided with the essential principles of law and the necessary facts to maintain it. Neither judges nor jurors can be carried to a favorable conclusion by the mere work of the advocate in court, although much may there be done to turn the oftentimes doubtful fortunes of the contest.

§ 4. **Mastering the facts.**—Where the contest is not to be fought solely upon questions of law the advocate must make

[1] "Our first precept," says Cicero, shall be: "That whatever causes he undertakes to plead, he must acquire a minute and thorough knowledge of them."

[2] Illustrations in Advocacy, Chap. II, 1.

himself a master of all the facts.[1] It is not sufficient that he gain a general knowledge of them; his duty is poorly done if he does not obtain a complete mastery of all the details.[2] Little things often decide big ones.[3] A hole in the bottom of a ship, even though it be not a large one, may work destruction as effectually as a great one; and a little hurt, though it be "not so deep as a well nor so wide as a church door," may cause death. Quintilian's advice is as valuable now as it was in the days when the Roman lawyers aroused the applause of listening multitudes in the Forum of Rome. The young advocate will be wise to study it with care, and even the veteran will find profit in often recurring to it.[4] The information gathered from the client is the basis of the investigation of the facts, and the counsel should draw from him all his knowledge of the facts as well as his inferences and hypotheses. Where the matters of which the client speaks are not susceptible of direct proof, or where they are not physical facts, it is well enough to ascertain the inferences and the hypotheses that the client has framed; but these must not be accepted without having been thoroughly examined and tested, for it is to be expected that the interest of the client will so bias his mind that his mental processes will neither be accurate nor just.

[1] Mr. Besant, in "The Ivory Gate," makes his solicitor, Mr. Dering, say, "I think nothing; I want the facts." The advocate, in his consultation with his client, should demand the facts, and should be content with nothing less.

[2] It has been said of Carlyle, that one of the elements of his power was "his almost excessive love of details." Emerson, in one of his letters to Carlyle, says: "I think you see as pictures every street, church, Parliament House, barracks, baker's-shop, mutton-stall, forge, wharf and ship, and whatever stands, creeps, rolls or swims thereabout, and make all your own." "My man who is to succeed," says Sir Arthur Helps, "must not only be industrious, but, to use an expression of a learned friend of mine, 'He must have an almost ignominious love of details.'"

[3] "Trifles," said Michael Angelo, "make perfection, and perfection is no trifle." "Life," says Oliver Wendell Holmes, "is a great bundle of little things."

[4] Quintilian's Inst., 7, 8, 12, 13. Cicero's course was much like that which Quintilian commends. Orators and Oratory, II, xxiv. And Webster said of Judge Parsons, "'Tis not enough for him that he has learned the leading points of a case, he must know everything." Harvey's Reminiscences of Webster, 82.

§ 5. **Examining the witnesses.**—The advocate's duty is not at an end when he has examined, no matter how exhaustively, his client; he must see and talk with his witnesses. In this respect the American lawyer has a great advantage over the English barrister, for the strict rules of English practice prevent the barrister from holding a personal interview with the witnesses.[1] Lord Tenterden said: "It is of the very greatest importance, as regards the result of a trial, that the principal attorney himself should, in due time, examine the witnesses and take down the result in writing." Mr. Chitty's advice is that, "Either the principal or a very experienced clerk, who will afterward attend at the consultation and to the conduct of the cause at the trial, and who will be above the suspicion of tampering with the witnesses, should personally, and in the absence of his client, see and examine each witness apart from the other, so that one may not influence the other as to the exact testimony he will give, and he should particularly inquire whether he has any interest in the event of the action, or whether there are any circumstances which might affect his competency in the opinion of the judge or his credit in the estimation of the jury."[2]

§ 6. **Object of preliminary examination.**—The chief purpose of the preliminary examination of the witnesses is, doubtless, to obtain a knowledge of the information they possess; but another purpose, scarcely less important, is to secure a knowledge of each witness. Witnesses differ very greatly in their mental characteristics and habits of thought, and one method of examination will not be successful with all. To successfully examine a witness the advocate should know the person with whom he has to deal. He should mold his method of examination to the temperament and intelligence of each witness that comes upon the stand. There will be the dull witness to be drawn out with plain and homely questions slowly put, the

[1] See 5 Corp. & R'y Jour. 143. In this respect the French practice is the same as that of the American advocate. Hist. French Advocates.

[2] 3 Chitty's General Practice, 821.

impulsive witness to be subdued and checked, the timid witness to be encouraged and supported, the swift witness to be controlled and kept to the facts. The advocate who has seen the witnesses face to face, and has formed his judgment of their capacity and temperament, will be much better qualified to examine them on the trial than one who sees them for the first time in the court-room. There is still another advantage to be gained from a personal contact with the witness, and that is this: the witness having once been examined by the advocate feels confidence in himself, as he knows that he will not be conducted over treacherous grounds nor led into dangerous places.[1] So, too, a personal interview with the witnesses enables the advocate to determine whether it is best to fully develop the testimony of the witness on the direct examination, or trust to the cross-examination to bring out with more strength and in fuller detail the facts within the knowledge of the witness. It is sometimes expedient to leave much for the cross-examination, for a material fact elicited on cross-examination strikes harder and cuts sharper than when brought out on the direct examination; but as there is always a great hazard in this course, it is only to be adopted when the way is plain and clear.

§ 7. Things seen.—What is seen is more strongly grasped by the mind and more firmly retained by the memory than what is heard.[2] Hooker says: "That which we drink in at our ears doth not so piercingly enter as that which the mind doth conceive by sight." It is not easy for even the best trained mind to get a clear conception of a place or of a physical thing from a description given in words. The impression produced upon the mind by an inspection of the place or thing involved in a legal controversy is much more accurate and enduring than that produced by a verbal description, no matter how accurate and vivid the words employed.

[1] An apt illustration of the statement of the text is supplied by Daniel Webster's handling of the witness Phelps in the "Smith will case." Harvey's "Reminiscences of Webster," 108.

[2] Ram on Facts, 37. "Things seen are mightier than things heard." Tennyson.

§ 8. **Maps, plans and photographs.**—There is much force in Mr. Chitty's suggestion, that it is "very material to have maps, plans, or even models of lands, water-courses and buildings carefully prepared and their correctness proved by the artist; and many important cases have, for the want of the information thereby given, failed on the trial."[1] The information imparted by maps, plans, and the like, is necessary to give the counsel, who is preparing his theory of the case, a full and clear view of the evidence, as well as to assist him in getting the jury to understand the evidence in its full force. Accuracy and fidelity must be insisted upon in the preparation of maps and plans, and the person who prepares them must be required to make them clear and plain so that they can be readily understood by the jury. The art of photography may often be made very useful, both in preparing and in presenting the case. Mr. Irving Browne has collected a number of cases in which the art of the photographer rendered important assistance in judicial investigations.[2]

§ 9. **Suggestions to witnesses.**—On the ground of prudence, if on no other, it is better not to make suggestions to the witnesses that may lead them to give false testimony, or corruptly color their statements. The witness who feels that an advocate, even though friendly to him, knows that he is testifying falsely, has not and can not have that consciousness of safety that gives strength to the testimony of a witness who feels that his wrong is known only to himself; nor can such a witness so well withstand the fire of a cross-examination. A witness invited by the demeanor of the counsel in the private examination to color his testimony is not likely to maintain himself upon the stand, and jurors and judges are quick to observe and distrust a witness

[1] 3 Chitty's General Practice, 852.

[2] "Humorous Phases of The Law," 413; Locke *v.* S., C. & P. R. R., 46 Iowa, 109; Conley *v.* People, 83 N. Y. 464; Ebron *v.* Zimpleman, 47 Texas, 503, S. C. 26 Am. Rep. 315; Leathers *v.* Salvor Wrecking Co., 2 Woods (C. C.), 680; Udderzook *v.* Com., 76 Pa. St. 340; Blair *v.* Pelham, 118 Mass. 421; Cozzens *v.* Higgins, 33 How. Pr. 436; Church *v.* Milwaukee, 31 Wis. 512; Duffin *v.* People, 107 Ill. 113, S. C. 47 Am. Rep. 431.

who seems ill at ease. It is better to keep the witness on the solid ground of truth, even though the question be viewed as one of expediency merely, for when that ground is left the witness is in danger, especially if he is aware that his turpitude is known to another.

§ 10. **Evils of coaching witnesses.**—The "coached" witness is almost always a bad one. But no advocate ought to be guided by the mere dictates of prudence in such a matter; his sole guides should be honor and integrity. The client may have a right to his talents and skill, but not to his conscience and integrity. Nor will a departure from the path of honor lead to good results, for no man that really possesses the character and talents requisite to a true advocate can justly and ably present a cause where he knows that he has corruptly engaged in the fabrication of testimony. A guilty conscience weakens power, and the advocate who must praise a witness can only do so with half a heart when he knows that he is in league with him in a criminal scheme. Power and guilt are seldom allies. If the advocate has been guilty of a criminal or dishonorable act it will much impair his power, for, like the thief who sees an officer "in every bush," little things will terrify him, the fear of detection will unnerve him, and in the effort to shield himself he will lose sight of the important points of his cause. Nothing makes an advocate so powerful as to feel that he is strong in his own integrity, and few things weaken him more than the dread that a witness may, through the pounding of the cross-examination, or through an inadvertent remark, expose the guilty effort to fabricate testimony. One great reason for the success of Rufus Choate was his deep conviction that he was in the right, for in Ashton's case he said: "I care not how hard the case is—it may bristle with difficulties—if I feel that I am on the right side, that case I win." It is not difficult for the advocate who is himself upright and honest to reach the conclusion that the client is in the right, for men naturally repose confidence in those who come to them for counsel and assistance, and this feeling grows

as the relationship continues. All men grow earnest in behalf of the persons whose cause they espouse; they believe only what is good of them, and reject the evil that is said of them. This is exemplified in politics and in religion, for good men will stand by their parties and their leaders, although strong evidence tends to prove them corrupt. The advocate ought not to weaken the confidence he will naturally have in the justice of his client's cause by any corrupt act of his own, for to the extent that his confidence is weakened, to that extent is his real power diminished.

§ 11. **Chitty's advice.**—Mr. Chitty, in speaking of the preliminary examination of witnesses, gives this excellent advice: "Every honorable practitioner at all events will take care that no part of his client's intercourse with the witnesses can have the least influence upon him to give his testimony otherwise than strictly according to the truth, and without evincing the slightest partiality to either party. Indeed, in prudence and in policy this is of the utmost importance to the client's interests, because the least improper interference with a witness might so disgust a jury as to induce them to find a verdict against a client, although law and justice might, on the whole, be in his favor."[1] If it appears to the jury that one witness has been corruptly tampered with, a suspicion is engendered against both client and counsel that it is very difficult to remove, and, indeed, one that it is often impossible to displace. The jurors reason that, if one witness has been corruptly influenced, others have also been probably tampered with, and a feeling akin to anger is aroused which works infinite mischief, for jurors, like other men, quickly become indignant if it appears to them that there has been an effort to impose upon them.

§ 12. **Harm caused by a bad witness.**—A bad witness does more harm to a cause than many good ones can repair. A good case may be irretrievably ruined by one bad witness, for

[1] 3 Chitty General Practice, 825.

men are apt to conclude, and not without reason, that a man who has done one bad act will likely do many more. It is, therefore, of great importance to prevent any suspicion that the witnesses have been in any way corruptly influenced, as well as to prevent any suspicion that they have had stories made up for them, or that one witness has been prompted by another. In order to prevent such a suspicion counsel and client must be scrupulously careful and circumspect in their intercourse with the witnesses.

§ 13. **Cautioning witnesses.**—It is as imprudent as it is dishonorable to "coach" or "tutor" a witness, but there are matters about which he may honestly and with entire propriety be cautioned. It is not improper to caution a quick-tempered witness to be careful to keep his temper under control, nor is it improper to direct him to be respectful to opposing counsel, and to avoid flippant or "smart" remarks. It is good practice to direct a witness to treat the judge with deference, to be decorous in his behavior, and to avoid boisterous conduct or unseemly levity. So, too, it is proper to admonish him that he has a right to fairly understand all questions that are addressed to him, and that, as it is his privilege to be allowed to fully comprehend the question, he may ask that it be repeated or made plain; and so, too, it is proper to inform him that in giving a conversation he should, as nearly as he can truthfully do so, give the exact words used. It is also proper to direct him that he should give responsive answers to the questions propounded to him, and not wander to other matters. It is suggested by Mr. Chitty—and few men were better qualified to give advice than he—that, "It may be of considerable importance that witnesses, especially females, unaccustomed to courts of justice, should for a day or two, or at least a few hours, before the expected trial attend court, so that by the observance of the demeanor of others they may be better prepared to overcome the sensation of alarm which would otherwise frequently incapacitate them from giving their evidence in a proper manner."[1]

[1] 3 Chitty General Practice, 825.

§ 14. **Duty of advocate in consultation with witness.**—It is the duty of the advocate in the consultation with the witnesses to draw from them all the facts of which they have knowledge. He must keep in mind that it is the facts, and not the inferences of the witnesses, that he seeks, and he must steadily, and sometimes sternly, keep them to the facts. They must be made to understand that they are to state the facts, and not their theories or conclusions. When a fact is stated, and the advocate has no reason to suspect that the statement is untrue, then he should lead the witness by fair and honest questions to recall all the little circumstances that fasten it in his memory, and give it probability. A naked fact, however positively stated, often seems improbable; but when surrounding circumstances are detailed its probability is firmly established. So, too, it often appears highly improbable that a witness should accurately remember a fact, yet when all the circumstances are developed the reason for its having fastened itself in his memory will satisfactorily appear. Another advantage that this method secures is that it strengthens the memory of the witness, for, upon the familiar doctrine of association, one thought recalls another with which it was once associated, and so the mention of one fact often recalls another which had almost entirely faded from memory. It is prudent, as well as honest, to admonish the witnesses in the private interview with them that you expect of them a true statement of the facts of which they have knowledge. This is prudent because it often happens that the witness will be asked on cross-examination to whom he made the statement given by him on the witness stand. To avoid unjust inferences arising from the probable answer that it was made to the advocate, it is well enough to be able to show that he was cautioned to tell the truth and give only the actual facts within his knowledge, and it is honest because it apprises the witness that you want to hear only the truth.

§ 15. **Inspection of written instruments.**—In cases where written instruments form important matters of evidence, the

safe course is to always demand and secure an inspection of them before trial. A close examination of written documents may often lead to important results and supply material assistance to the advocate, both by advising him of danger to be encountered and by enabling him to detect the fabrication of evidence by the manufacture of false documents, or the alteration of genuine ones. There are cases in the books where the manufacturer's imprint upon the paper showed that the document purported to bear a date long anterior to that at which the paper upon which it was written was manufactured.[1] When there is serious doubt as to the authenticity of a document it is prudent to investigate the character of the paper on which it is written, and, if possible, ascertain when and where it was made. One case has come under our observation where it appeared that words of an important character were printed by types not manufactured until some years after the date affixed to the instrument. In another case given in the books an instrument was produced purporting to have been executed in a county which was not in existence until long after the date which the instrument bore.[2]

[1] A member of the Kansas bar furnishes us with the following instance: "A number of law books had recently been stolen from several libraries, and the thief had finally been secured. He claimed to have purchased the books, and all had his name in them, with the date of purchase. There were no distinctive features by which the owners could identify the books. Finally, looking in the volume of Cooley's Principles of Constitutional Law, we found that the thief had written the date 'May, 1884,' as the date of purchase. The title page bore publication date of 1880. But within the body of the book is a note which contains reference to a national law passed in 1886, and the edition was one of the year 1887. Upon the detection of this fact the fellow wilted, and plead guilty. He was a man of excellent reputation, and all the other evidence would certainly not have availed to convict him."

[2] The importance of such matters is further illustrated by the following instance, for which we are indebted to an eminent member of the Indianapolis bar:

"Some years ago a brother lawyer asked me to help him try a cause, and said before the case came on for trial he would have the facts all in hand. Some weeks afterwards, I was summoned to the forum by a telegram that the case would be tried the next day. It was a case of a contest for a county office, and the question was which candidate had received the most votes at the election. It appeared upon the face of the returns that our client had a majority of twelve; but on a 'recount' of the votes, under the

§ 16. **Copies should not be depended upon.**—Where instru-

law, it appeared that our adversary had a majority of twenty-seven. It took but a short while to ascertain that the variation was confined to two precincts. Under the law at that time all the ballots were required to be returned to the county clerk, sealed in paper bags furnished by the State for that purpose. I talked with the election officers in each of these precincts, and they all declared, without regard to party affiliations, that they had done their work carefully; that they knew the race was close, and the people deeply interested, and they had taken every precaution to make no mistakes, and would swear that they returned the votes as cast. I then sent for some of the members of the recounting board, and they, with equal frankness and confidence, affirmed that they had counted the ballots with precise care, and they would be compelled to swear, without regard to party affiliations, that their count was correct. The burden of proof was upon our client. I went over to the court-house and asked the commissioner's court for permission to examine the bags. They ordered the officer to bring them into open court and display them on the table. On examination, there were no holes or apparent opportunity for having tampered with the tickets while they were in the bags. The bags were in the form of large envelopes, and sealed over the laps on the backs. Several days had elapsed between the filing of the bags in the clerk's office and the recount.

"While at the court-house I noticed that the transom over the clerk's office was open, and large enough for a man to climb over. But we had no evidence that any person, in any manner, had tampered with the tickets. Indeed, it appeared impossible, because the recounting board had carefully opened the bags at the end, so as not to disturb the wax thereon placed by the election officers, and resealed the bags upon the close of the recount.

"This had occupied the afternoon, and we had a consultation in the evening. We called in the election officers in the two precincts one by one, and examined them again, without finding any fact that would break the force of the opposition. Finally, I said: 'Have you any friend in this town who is in the habit of using sealing wax; if so, send for him.' He came, and, taking an envelope from the table, I asked him whether he could seal it with wax, open it, and reseal it again, so as to cover detection. He said he could, and that often after having sealed a package, wishing to recount the money, or for some other purpose, he had done it. I at once procured a stick of sealing wax, and taking an envelope filled it somewhat full, and asked him to do it. He was careful not to wet the mucilage, and drew the melted wax over the line of the lap. After it had cooled, he took out his pen-knife and gently picked a line along the center of the seal. Then, taking his fingers, he broke it readily in the line of the mark thus made. I saw how it could be done.

"'Now,' I said, 'how do you reseal it?'

"Taking the heated wax, he drew it over the break, saying: 'If I want to perfectly conceal my work, I cover entirely the old wax, but otherwise I simply lay the warm wax over the break, and then it presents the ap-

ments are important it is unsafe to depend upon copies, since

pearance, as you see, of one ridge lying upon another.'

"I had observed this peculiarity on the election bags in the two townships, but it had not impressed me sufficiently at the time to arouse even a suspicion; because, perhaps, I was unfamiliar with the use of wax.

"In the morning the trial began. The opposition were bold. I first introduced the election returns, and then, to the consternation of my adversaries, put in evidence the returns of the recounting board. Calling the expert, whom I had subpœnaed in the meantime, I proved his business, his long experience in the use of sealing-wax, and asked him to go to his office, which was only a short way off, and get a stick of wax and his lamp. As he arose, I asked the clerk to give me a large envelope. He handed me one used for court files. Gathering up a newspaper, I put it in and then my adversary wanted to know what this had to do with the case. I declined to state the purpose, but assured the court that I would make it competent.

"The house was crowded and political excitement ran high.

"Upon the expert's return, I asked him to seal the envelope which I handed him. He did by drawing the wax down the line of the lap. I then called for the bags for the two precincts wherein the variation was, and invited the attention of the court to the returns of both boards to show that the question was narrowed to these two precincts. By this time the wax was cold. Turning to the expert, who was still upon the witness stand, I handed him the envelope just sealed and asked him if he could open it and reseal it so that it would not be discovered. He answered, "yes." I then told him to open it. He went through the process above described. I then told him to reseal it and he did it in the same manner as he had done the night before, stating at the same time that if he desired to entirely conceal his work he would lay the wax entirely over the old ridge, but ordinarilyhe drew the wax over the break, and I asked him to do the same in this case.

"Then laying this envelope along side of the two bags in contest they became silent witnesses in themselves.

"Looking at the election officers in these two precincts, my eye fell upon a sturdy, white-haired, broad-shouldered man who had told me the night before that he had sealed his bag. His eyes were gleaming with intelligence. It would not do to hold a conference in the presence of the court or the by-standers. Besides, I had no doubt as to his testimony. Putting him in the witness chair he told how carefully he and his associates had counted the tickets; that when the work was done it was late at night, and that putting the tickets in the bag the question arose as to whose duty it was to seal the bag; that it was agreed that as he was the chief officer it fell to him; that being a farmer he was unfamiliar with the use of sealing-wax, and the stick furnished by the State being small, he had not used one-half as much wax as now appeared upon the bag.

"His associate election officers confirmed him. Still the court and the audience sat breathless and unconvinced.

"Going to the next precinct, I called for the officer who had sealed the bag. On handing the bag to him he testified that he had sealed it, paused, took it

it not unfrequently happens that the copyist has fallen into an unintentional error, or has intentionally interpolated or omitted important clauses.[1]

§ 17. **Client's statement of contents not to be trusted.**—Few things are more hazardous than to rely upon a client's representation of the contents of a written instrument, for, in the great majority of cases, he gives, not the language of the instrument, but his own construction of it. The construction of written instruments, whether wills, deeds, or agreements, is a work of great difficulty, often perplexing the best lawyers and most experienced judges, and no advocate does his duty unless he himself carefully studies and cautiously weighs all the important words contained in a written instrument.[2] In order to do this successfully he must get into his mind clearly, fully, and accurately the circumstances surrounding the parties at the time of its execution.

§ 18. **Circumstances aid work of construction.**—A dim and indistinct view will not enable the advocate to give a writing a construction satisfactory to himself, and unless there exists

up, examined it with care, took out his pocket-knife and began picking at the wax, no one knew for what purpose.

"Question. 'Is this wax and bag in the condition in which it was the night you sealed it, and as you brought it and delivered it into the custody of the county clerk?'

"Answer. 'No; and I will tell you why. I keep the railroad station in my town. I am in the habit of using sealing-wax every day, and I have no recollection as to how I sealed the bag, but I know I heated the wax over an oil lamp because the election was held in the depot, and the railroad company furnished only that kind of light, and any one can see tallow in this wax'—holding it up to the inspection of the judges.

"Instantly there was a shout of relief. When quiet was restored, I announced that I rested the case.

"The finding was in our favor. My client was declared elected. I returned on the next train, feeling that not only was necessity the mother of invention, but was also the spur of justice."

[1] Wilson *v.* Tucker, 3 Starkie N. P. 154.

[2] This is also necessary in order to construct a proper theory of the case, for a party will be held on appeal to the theory, and the construction adopted and contended for by him in the trial court. Barrett *v.* Fisch, 76 Iowa, 553, S. C. 41 N. W. Rep. 310; Metzler *v.* James, 12 Colo. 322, S. C. 19 Pac. Rep. 885; Elliott's App. Proc., §§ 490–492.

in his own mind a strong, clear, and decided conception he will miserably fail in the effort to convey to a court or jury a just idea of its force and meaning. Instruments would almost always be obscure if it were not for the light which attendant circumstances cast upon them—in many cases, indeed, would be utterly unintelligible but for that light. It often requires close investigation to discover the circumstances which supply the light, and when they are discovered the full benefit from them can be obtained only by a skillful arrangement that will pour their light upon the dark places.[1]

§ 19. **Circumstances may create probability.**—The circumstances of a case require the most careful scrutiny and the most rigid analysis, for circumstances often create probability, and probability is a prime factor in all forensic contests. Positive testimony if inherently improbable will often be of little value, and circumstances will frequently control cases as against positive testimony. In truth, it is the circumstances that give color and character to all complicated cases. Circumstances constitute the atmosphere of complex causes.[2] The task of an advocate can not, therefore, be considered at an end when he has ascertained what direct evidence can be adduced. There remains, in all complex cases, at least, the work of ascertain-

[1] Words are often ambiguous, and careful scrutiny is required in order to determine in what sense they are employed. Even in legislative enactments, words are often so carelessly employed as to leave the meaning in doubt. Thus, the word "female" is often used when girl or woman is meant, and in the British Reform Act of 1867, the word "man" was so used as to render it impossible to tell whether it was meant to include or exclude women. So, the word "team," in a lease gave one of the English courts much difficulty in attempting to determine its true meaning, and the same difficulty has been encountered in construing the term "tools" or "tools of trade," as used in statutes giving the right of exemption. See 7 Am. and Eng. Encyc. of Law, 135–137 and notes; Kilburn v. Demming, 21 Am. Dec. 543, and note.

[2] Masters of the art of advocacy have often so used circumstances as to overthrow positive and truthful testimony. Against false testimony they are always strong instruments of attack; but they have often been made use of to overpower or hide the truth by shrewd advocates, who employ them as painters employ colors to hide defects or deformities, so that, as was said of old, "painted error appears in many things more probable than truth."

ing whether the direct evidence is, or is not, probable, even though it may appear that direct testimony can be adduced upon every material point. "Probability," says Dr. Campbell, "is a light darted on an object from the proofs, which, for this reason, are pertinently enough styled evidence." It is this light which must be obtained from the circumstances and cast upon the testimony of the witnesses. There is much of truth in what Aristotle puts into the mouth of the advocate who can call no witnesses: "Let him also say that it is impossible to lead probability astray on the score of money, and that probability is never detected bearing false testimony,"[1] for it is true that probability is one of the most difficult things for money to secure or motive to create. In many cases circumstantial evidence will be the only kind that can be obtained, but circumstantial evidence is often more satisfactory than direct evidence can be. Whether the evidence be direct or circumstantial, it is necessary to prove such circumstances as make the evidence probable, for circumstances create probability and probability secures verdicts. In searching for the circumstances of a transaction the minutest and closest attention to details is requisite, for it is little things, carefully gathered together and skillfully grouped, that create probability.[2]

§ 20. **Influence of probabilities.**—There are few things in the abstract sciences,[3] or, for the matter of that, in any of the affairs of life, that can be proved with absolute certainty; the highest certainty that can be attained falls far short of mathematical demonstration. The contests of the forum are battles of the probabilities. In the ordinary affairs of life, whether in matters of commerce or mechanics, whether in matters of

[1] Aristotle Rhet., Chap. xv.

[2] The successful advocate is not the one who deals in generalities, but the one who goes into the specific matters of law or fact of the particular case. Sir James Mackintosh is a striking example of the failure of a very great man in advocacy. Coleridge said of him, "Sir James Mackintosh is the king of men of talent, but he always dealt too much in generalities for a lawyer. He is deficient in power in applying his principles to the points in debate."

[3] Mr. Sedgwick philosophically discusses this subject. Fallacies, 35, 225, 221.

law or medicine, men can do no more than reach probable truth. Dr. McCosh says: "It is in vain to expect demonstration in every line of inquiry. Demonstration is confined to a limited class of objects, and these characterized by their simple and abstract nature. In most of the sciences it is not available; it can not be had in chemistry, in natural history, in psychology, in political economy. In the practical affairs of life no man looks for it. If a man's house is on fire he will proceed to pour water upon it, though it can not be demonstrated, in the technical sense of the term, that water will quench the flame."[1] The testimony upon which the advocate relies must appear to be not merely possibly true, but probably true, for there is a wide difference betwen probable and possible truth.[2] The probability which carries conviction in courts of justice is not the probability of poetry and romance, which has been not inaptly denominated "the possible probable," but that probability which approaches as near as possible the real, absolute truth.[3] That may be deemed probable which is consistent with human knowledge and experience, and that may be regarded as improbable which is against the experience and knowledge of mankind. This, however, is a general rule to which there are many and notable exceptions, but it is one upon which it is safe to proceed in the very great majority of cases. It is this sort of probability to which Mr. Harris refers when he says: "Probabilities, therefore, are the mainstays of evidence; are, in fact, the evidence."[4]

§ 21. **Inferences.**—Archbishop Whately says: "To infer, then, is the business of the philosopher; to prove, of the advocate. The former from the great mass of known and admitted truths wishes to elicit any valuable additional truth, whatever that has been hitherto unperceived, and, perhaps, without knowing with certainty what will be the terms of his

[1] Logic, 160.

[2] Wills on Circumstantial Evidence, 6–10; Ram on Facts, 116.

[3] Aristotle Rhet. (Bohn's ed.), 425, n. But proof is said to be a stronger term. Brown *v.* Atlanta, etc., R. Co., 19 S. Car. 39.

[4] Illustrations in Advocacy, 95.

conclusion. The advocate, on the other hand, has a proposition put before him, which he is to maintain as well as he can. His business, therefore, is to find middle terms (which is the *inventio* of Cicero), the philosopher's, to combine and select known facts or principles suitably for gaining from them conclusions which, though implied in the premises, were before unperceived. In other words, for making logical discoveries."[1] This is a narrower view of the duties of an advocate than our American practice warrants, if not, indeed, narrower than that warranted by the English practice. An advocate must both infer and prove; from established facts he must infer probable conclusions, and these he must prove to the jury. The work of inferring must precede that of proving. Direct evidence furnishes the advocate the materials out of which to construct his inferences; from these materials he must infer conclusions, and these he must prove in argument. The conclusions of fact essential to the maintenance of an issue must first be inferred and firmly fixed in the mind of the advocate before he can prove them to the triers of his case. So that the work of inferring is quite as important to the advocate as to the philosopher. There are many cases where this work is one of great difficulty and importance, and where success depends upon the care and skill with which it is done. There are, indeed, comparatively few contested cases where the work of inference is not of prime importance, for, in almost all cases, the direct evidence must be supplemented by inferences resulting from it. The necessity for securing a clear and accurate knowledge of the facts from which the inferences are to be drawn, as well as of conducting the process, is an imperious one, for if the facts which constitute the premises are not correctly stated, the inferences will be invalid.

§ 22. **Groundwork of inferences.**—While the process of inference is a legitimate one, and while verdicts may be, and often are, based upon inferences,[2] it must be kept in mind that there

[1] Logic, Book IV, Chap. iii, § 1.

[2] 1 Greenleaf's Evidence, § 13; Union Mutual Ins. Co. *v.* Buchanan, 100 Ind. 63, p. 72; Hedrick *v.* D. M. Osborne Co., 99 Ind. 143; Ram on Facts, 283–300.

must be evidence of the circumstances from which the inferences are drawn. There can be no valid inference where there is no evidence establishing the facts upon which the reasoning proceeds.[1] This doctrine is admirably presented by the Supreme Court of the United States in a recent case,[2] where it was said, in speaking of inferences from unproved facts: "They are inferences from inferences, presumptions resting on the basis of another presumption. Such a mode of arriving at a conclusion of fact is generally, if not universally, inadmissible. No inference of fact or of law is reliable drawn from premises which are uncertain. Whatever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved, and not themselves presumed. Starkie on Evidence, p. 80, lays down the rule thus: 'In the first place, as the very foundation of indirect evidence is the establishment of one or more facts from which the inference is sought to be made, the law requires that the latter should be established by direct evidence, as if they were the very facts in issue.'" It is, therefore, essential that the advocate should search for and secure evidence of the circumstances which he expects to make the basis of his inferences. There must be a visible connection between the circumstances proved and the inferences sought to be drawn from them. "The law requires an open and visible connection between the principal and evidentiary facts and the deductions from them, and does not permit a decision to be made on remote inferences."[3]

§ 23. **Difference between facts and evidence.**—There is an essential difference between facts and evidence,[4] and it is necessary to carefully discriminate between the evidence and the

[1] Chambers *v.* Hunt, 3 Harr. (N. J.) 354; Gates v. Hughes, 44 Wis. 336.

[2] United States *v.* Ross, 92 U. S. 281.

[3] United States *v.* Ross, *supra;* Best on Presumptive Evid. 95; Douglass *v.* Mitchell, 35 Pa. St. 440; Richmond *v.* Nicken, 25 Vt. 326.

[4] Clay Co. *v.* Simonsen, 1 Dak. 403; Parks *v.* Satterthwaite (Ind.), 32 N. E. Rep. 82. This distinction becomes of the utmost importance in preparing special findings and special verdicts, as, in such cases, the facts only will be considered, and no attention will be paid to mere items of evidence. Kirkpatrick *v.* Reeves, 121 Ind. 280.

facts in preparing for trial, in drafting the pleadings, and in arguing the cause. An advocate who should do nothing more than rehearse the evidence delivered on the trial would make poor progress toward securing a verdict, for, if he would carry the jury, he must dig out from the mass of evidence the controlling facts, skillfully array them, and clearly and strongly place them before the jury. Evidence consists of the marks of facts, and whether a fact is or is not established by evidence depends upon the plainness and sufficiency of the marks which the evidence impresses upon it.

§ 24. **Marks of things.**—One who looks below the surface of things will find that the skillful advocate, in ascertaining the facts from the evidence, proceeds upon the logical doctrine that what has the marks of a thing is the thing itself. If the logical rule were more often kept in mind and followed the conclusions of fact drawn from the evidence would more often be accurate. A fact can only be recognized through signs or marks, and the place to look for those marks or signs is in the evidence. In strictness, the fact itself is never found, but only the marks and signs, and it is for these that search must be made.

§ 25. **"Fact" not synonymous with "truth."**—The word "fact," as used in legal proceedings, is not synonymous with "truth," for it means no more than an event, occurrence, circumstance, or mental state.[1] An English author says, in substance, that "fact is anything that is the subject of testimony;"[2] but this is too vague a definition to be of practical value, and, besides, it is too broad, for it includes matters of opinion. Mr. Burrill says that, "However paradoxical it may appear, there may be such things as false facts," and he proves the truth of

[1] Stephen Introduction to Indian Evid., Chap. ii; Stephen's Digest Law of Evidence, Art. I; G. C. Lewis, Influence of Authority in Matters of Opinion, Chap. i; Burrill's Cir. Evid., 218; Austin's Juris., § 499; Wilson's Logic, 213; Drake *v.* Cockroft, 4 E. D. Smith (N. Y.), 34; Lawrence *v.* Wright, 2 Duer (N. Y.), 673.

[2] Ram on Facts (3 Am. ed.), 17, and notes.

his statement by reference to cases where facts have been fabricated.[1]

§ 26. **Chief object of preparatory investigation.**—The preparatory investigation is prosecuted for the purpose of securing the ruling facts of the case, and not merely for the purpose of gathering a mass of evidence. Facts more potent than those apparent from the positive testimony are secured by a process of inference. The search, if properly conducted, will be for the ultimate facts which rule the case, and to obtain these the searcher must infer, from facts stated to him, his own conclusions. The inductive process is the primary one. A number of particulars are brought together, and from these inferences are made. It is obvious that without a knowledge of the particulars the facts can not be known, and one who is ignorant of the facts, though he may know something of the evidence, can not effectively take the first step in the preparation of the theory of the case. The conclusions will be of little avail if drawn only in shadowy outline, for the outlines must be bold, and the foreground and background must be laid out in the mental conception as in a picture. If no more than a dim, indistinct view of the facts is secured the advocate will make but a lame and halting progress in determining upon the theory he will adopt, and without a skillfully constructed theory he will go stumbling through the contest.

§ 27. **Rules of induction to be observed.**—The rules of induction must be carefully observed, and the particulars relied on must be sufficient in number and character to supply a substantial foundation for the conclusions of fact. The famous Tichborne case affords a striking illustration of the gathering together of a multitude of particulars, and from them inferring the conclusion that the claimant was the butcher, Arthur Orton, and not the baronet, Roger Tichborne. Many of the

[1] Burrill's Circumstantial Evid., 219; Swift used the word "fact" in the same sense as the lawyers do, for he says in one of his works, "The fact was false." See, also, as to the meaning of the term "facts" in pleading, 7 Am. and Eng. Ency. of Law, 658.

sketches of Edgar A. Poe are wonderful exhibitions of the talent of inferring a conclusion of fact from circumstances, and well deserve the study of the advocate. All the great thinkers in physical philosophy were masters of the inductive process, and few better illustrations of the practical application of the principles of inductive reasoning can be found than those exhibited in their works. The careful and keen discrimination that discovers the material particulars which support the conclusion sought, and rejects, by elimination, the irrelevant elements, is as important to the lawyer as to the philosopher, and material assistance may be obtained by the former from a study of the works of the latter. The advocate who gathers a multitude of particulars together, and does not infer conclusions of fact from them, makes no more real progress than did the naturalists of old, who never ascended above particulars to general conclusions. Without careful and discriminating inductive reasoning, generalization is impossible, and without logical generalization it is not possible to ascertain to what class a case belongs, or by what principles it is governed.

§ 28. **Witness should be allowed to tell his own story.**—The witness should, as a general rule, be allowed to tell his own story, kept, however, with a gentle but firm hand to the facts. It is especially necessary to be vigilant in obtaining testimony of oral conversations, for witnesses are prone to give their own conclusions rather than the words actually used by the parties. An eminent and experienced judge says: "With reference to all evidence of conversations, you must bear in mind this: that where the evidence depends on the very words used there is a possibility that the witness may be clothing in his own language that which he thought was meant, when if you had the very words which had been originally uttered, you might come to the conclusion that something else was intended."[1] A witness who gives his own conclusions, and not the words, does much injury to a case, for a cross-examination will dis-

[1] Sir C. Cresswell in Keats *v.* Keats, 28 L. J. Mat. Cases, 169; 1 Pulling on Attorneys, 193.

close his error, and the jury will be very apt to look upon him as a corrupt witness who has endeavored to supplant with his own inferences the words used by the parties. The mischief may extend further than the breaking down of the witness, because the inference of the jury will very likely be, that the party by whom the witness was introduced meant to impose upon them by placing before them the testimony of an untruthful witness. Jurors are very sensitive, and warmly resent any effort to deceive them, not only because it discredits their intelligence, but also because they respect fair and open measures.

§ 29. **Securing knowledge of unfavorable evidence.**—It is in obtaining evidence of oral conversations, more, perhaps, than elsewhere, that the danger lies of bringing reproach upon the advocate's client and cause, for witnesses are almost always favorable to the party who calls them, and this feeling induces them to conceal or color parts of a conversation; but, as the adverse party is entitled to the whole conversation, it is wrenched from the witness on cross-examination, and when it comes in that manner it falls heavily upon the party by whom the witness was called. It is better to know of the unfavorable evidence in advance of the trial, since this will allow time to secure explanatory or nullifying evidence, and will prevent the discomfiture that a surprise often causes.

§ 30. **Meeting unfavorable evidence.**—It is safer to meet unfavorable evidence boldly and openly than to attempt to evade or conceal it, so that, even if the advocate proceeds on no higher ground than that of policy, he should encounter the adverse evidence in the open field. Boldness and frankness will succeed where artifice and cunning will fail. For these reasons, it is well to draw from the witness, in the preliminary examination, all of the conversation, and not leave it to the cross-examination to develop it in detail for the first time. If the witness is reluctant to give it in full, he must be plied with questions, such as a cross-examiner would employ, to bring it out uncolored by his own impressions, and in full.

§ 31. **Difference between gathering materials and presenting case in court.**—There is an essential difference between the work of gathering the materials and the work to be done in developing and presenting the case in court. In prosecuting the preliminary investigation the facts must be scrutinized with almost microscopic power; not, however, so much for the purpose of fastening details in the memory as for the purpose of discovering and fixing in the mind the strong points of the case. Lord Abinger's practice, as he says in his memoirs, was to hunt for and secure the strong points.[1] This is the hunt every great advocate makes, and, although it may lead into by-paths and out-of-the-way places, he never loses sight of the object of his search. It is not of so much importance that many points be discovered as it is that the strong ones be brought out and placed before the jury in a light so great as to exhibit their full force. Æsop's fable of the cat and the fox well illustrates the case of an advocate with many points, while his adversary has only one, but that a capital one.

§ 32. **Committing evidence to memory.**—The advocate who merely commits the evidence to memory can not present the facts with strength or force to a jury. They must be wrought out and crystallized by thought, for an advocate whose mind is choked with undigested materials will perceive but faintly and dimly the strong points of his case, and will present them feebly and obscurely. The facts must be fully and distinctly in his own mind, and go to the jury clearly cut and sharply defined. It is not by fastening the evidence in memory that success is assured, but by thinking and reasoning out the strong points of the case. The case must be investigated for a twofold purpose—for the facts, and for the means of placing them before the triers; but the principle which governs in the investigation is not the same as that which controls the development and presentation of the facts. The work of extracting the facts which give tone and color to the case must not be left for the jury to do, but must be done by the advocate. In

[1] Memoir of Lord Abinger, 61-62.

doing this work he must of necessity push his way along devious paths leading crookedly through many details; but he must bring order out of confusion and make the path straight and easily found.

§ 33. **Nature of evidence.**—The evidence exhibits the facts, but the evidence is the means of proof, not the body of facts.[1] The investigation is to be so made as to dig out the facts and secure the means of exhibiting them, but not so as to choke the mind with a mass of material. It is one thing to so conduct the investigation of the case as to obtain a knowledge of the facts, and quite another thing to convey that knowledge to the minds of others. The effective advocate presents to the jury, not the crude materials he has collected, but the results which his work has produced from the materials he has gathered in his investigation.

§ 34. **Use of crude materials.**—The crude materials are worked into new forms and shapes before they are laid before the jury in argument. It may be necessary, and, indeed, almost always is necessary, to give much evidence to the jury, but it should be evidence that has weight and force, for weak evidence, like a weak argument, detracts from the force of the strong. But until the materials are thoroughly examined what is weak and what is strong can not be known, so that, while all the details are not to be presented in argument, they must be brought into a full light by the preliminary investigation. The lives of great advocates, from the time of Cicero to the present, afford abundant proof of the great power that springs from the faculty of investigation industriously exercised. Take, as one instance of many, that of Alexander Hamilton, of whom Fisher Ames says: "It is rare that a man, who owes so much to nature, descends to depend on industry as if nature had done nothing for him. His habits of investigation were very remarkable; his mind seemed to cling to his subject until he had exhausted it."[2]

[1] Schloss *v.* Creditors, 31 Cal. 203; Perry *v.* Dubuque, etc., R. Co., 36 Iowa, 106; 1 Greenl. Ev., § 1.

[2] Works of Fisher Ames, Vol. II, p. 200.

§ 35. **Means of making facts evident to jury.**—It is not enough to obtain information of the facts; this information must be supplemented by a knowledge of the means of making them evident to the triers of the case. The means of making the facts evident are prescribed by law. Where the evidence can be found, and what its character is, are matters almost as important as a knowledge of the facts themselves; for it would profit little if the means of making the facts evident were not at command, however thorough the knowledge of the facts may be. The information as to the means of establishing the facts must be something more than the mere inference or judgment of the client. It must be information of the evidence as it actually exists. It may be that material facts can only be proved by written evidence, or it may be that only a particular kind of documentary evidence is competent; or, again, it may be that only a particular class of witnesses will be permitted to testify. Interest may disqualify, capacity may be wanting, or lack of skill may constitute incompetency. Much, therefore, must often be ascertained in order to determine whether the evidence will be received.

§ 36. **Ascertaining reputation of witnesses.**—It is often necessary to ascertain the reputation of the witnesses, not for the purpose of determining their competency, but for the purpose of providing means of attacking or defending that reputation, as the case may require.[1] It may happen that the character of the witness is so bad that, although he may speak the truth, it

[1] A case mentioned by Mr. Montagu Williams illustrates the importance of ascertaining information as to the reputation and associates of adverse witnesses. He says that the case of a client represented by himself, Sergeant Parry and Mr. Straight, depended entirely on the testimony of a young and attractive girl; that Sergeant Parry, a very great cross-examiner, had endeavored to break her down, but was unable to shake her testimony. An accidental question, addressed to her sister, who followed her as a witness, elicited the answer:

"Yes, I do remember his coming to our house and asking for my sister. He asked for her by her nickname."

"Nickname! What is her nickname?"

The witness answered: "They call her Cock Robin."

"From that moment," says Mr. Williams, "the case was at an end."

will require a strong array of circumstances to fortify his testimony, or that other testimony will be required to corroborate it. The business of the principal witnesses should be known, and, in many cases, their associations and surroundings, for this information will be of great importance in selecting a jury, since it is expedient to select jurors who are least likely to be prejudiced against the witnesses. Nor is the investigation to be confined to the witnesses of the client the advocate represents; the information as to the reputation, habits, life and character of the adversary's witnesses should be as thorough as possible. This information will be of assistance, not only in selecting the jury, but also in examining the witnesses on the trial.

§ 37. **Identification of persons.**—It is also of importance in many instances to secure competent evidence of the identity of persons.[1] The reports contain many cases showing the importance of securing competent and satisfactory evidence of the identity of persons engaged as parties or as participants in transactions which the litigation concerns.[2] The adjudged cases show, also, that there is much uncertainty in evidence of identification, and that witnesses are often in error.[3] There is often great difficulty in satisfactorily identifying persons, by indirect facts and attendant circumstances seemingly of no great value, and much strength is frequently added to the direct testimony of witnesses who testify as to personal identity, so that it is necessary to search for and secure evidence of circumstances which corroborate and give strength to the direct

[1] The question of identity is one of fact. Ellsworth *v.* Moore, 5 Iowa, 486; Chandler *v.* Shehan, 7 Ala. 251; People *v.* Rolfe, 61 Cal. 540.

[2] People *v.* Williams, 29 Hun, 520; White *v.* Commonwealth, 80 Ky. 480; Hopper *v.* Commonwealth, 6 Gratt. 684; Hamby *v.* State, 36 Texas, 523; Commonwealth *v.* Cunningham, 104 Mass. 545; American, etc., Co. *v.* Spellman, 90 Ill. 455; State *v.* Kingsbury, 58 Me. 238; Dupoyster *v.* Gagani, 84 Ky. 403; Kansas, etc., Co. *v.* Miller, 2 Col. Ty. 442; Ruloff *v.* People, 45 N. Y. 213; Linsday *v.* People, 63 N. Y. 143.

[3] Ram on Facts, 462; Harris' Before and at the Trial (Am. ed.), 372; 1 Southern L. J. 392; Legal Puzzles, 183; Sergeant Ballentine's Experiences, Chaps. xli, xlii; Wharton & Stille Medical Juris., §§ 620, 626, 649.

testimony that comes from the witnesses who testify upon that question.[1]

§ 38. **Means of identifying persons.**—There are many modes and means of identifying a person.[2] It is held in some of the cases that a person may be identified by his voice,[3] but this is regarded as uncertain evidence of identification by some of the law writers,[4] except in cases where the voice of the person thus identified is a peculiar one.[5] Identification by the voice is a

[1] Photographs are often very valuable means of identifying persons and things. Keyes *v.* State, 122 Ind. 527; Cozzens *v.* Higgins, 3 Keyes (N. Y.), 206; Blair *v.* Pelham, 118 Mass. 420; Udderzook *v.* Commonwealth, 76 Pa. St. 340; Church *v.* City of Milwaukee, 31 Wis. 512; Commonwealth *v.* Coe, 115 Mass. 481; Ruloff *v.* People, 45 N. Y. 213; Luke *v.* Calhoun County, 52 Ala. 115; Regina *v.* Tolson, 4 Fost. & F. 103; Barnes *v.* Ingalls, 39 Ala. 193; Scharble *v.* Life Ins. Co., 9 Phila. 136; Cowley *v.* People, 83 N. Y. 464; Beavers *v.* State, 58 Ind. 530. Some very interesting and instructive cases showing the use of photography in judicial matters will be found in the books. It has been used to expose a forgery. Wharton Cr. Ev. (8th ed.), 544. To prove a signature genuine. 13 Alb. L. J. 407. To show the difference between bread made in different ways. Chemical Works *v.* Hecker, 11 Blatch (U. S. C.), 552.

[2] Burrill Circumstantial Evidence, 269; Wharton's Crim. Evidence (8th ed.), § 808; Rex *v.* Brook, 31 St. Tr. 1137. The body of a dead person may be identified by the teeth. The celebrated case of Commonwealth *v.* Webster, 5 Cush. 295. See, also, State *v.* Williams, 7 Jones (N. C.), 446. See, generally, Linsday *v.* People, 63 N. Y. 143; Rex *v.* Clews, 4 Carr & P. 221; McCulloch *v.* State, 48 Ind. 109; Ruston *v.* State, 4 Tex. App. 432; Curry *v.* State, 7 Tex. App. 267; Mullery *v.* Hamilton, 71 Ga. 720; Tichborne's Case, 3 Wharton & Stille Med. Juris., § 623; State *v.* Kepper, 65 Iowa, 745.

[3] Davis *v.* State, 15 Tex. App. 594; Commonwealth *v.* Hayes, 138 Mass. 185; Commonwealth *v.* Williams, 105 Mass. 62; Messner *v.* People, 45 N. Y. 1; Rex *v.* Harrison, 12 State Tr. 850; Brown *v.* Commonwealth, 76 Pa. St. 319. See, generally, Commonwealth *v.* Scott, 123 Mass. 222; King *v.* Donahue, 110 Mass. 155; Regina *v.* Cheverton, 2 Fost. & F. 833.

[4] 1 Southern Law Review, 395.

[5] Mr. Walter Besant, in The Ivory Gate, gives strong reasons in support of the theory that the voice is satisfactory evidence of the identity of a person. We copy from his book the following: "The voice of this distinguished person Checkley knew. But the other voice—that he knew well. And he could not remember whose voice it was. Very well he remembered the sound of it. Some men never forget a face; some men never forget a shape or figure; some men never forget a voice; some men never forget a hand-writing. A voice is the simplest thing, after all, to remember, and the most unchanging. From eighteen till eighty a man's voice changes not, save that in volume it decreases during the last decade; the

weak mode of identifying a person, unless the voice is one marked by some distinctive peculiarity, or the witnesses from whom the testimony comes are well acquainted with the voice of the person whose identity is in question. Voices may be disguised by physical causes, or by the effort of the person whose identity is in question, and so may features and other physical parts of men. The question of identity is one of fact and not of law.[1] As the question is one of fact, all evidence bearing upon the question must be submitted to the jury, and it is for the jury to determine whether it is satisfactory and trustworthy.[2] Circumstances may establish the identity of a person and it is competent to give evidence of his family connections, his associations, his home and the like.[3] There is a conflict in the cases as to whether identity of persons can be assumed from the identity of names,[4] but we incline to the opinion that from the mere identity of names it can not be assumed that there is identity of person, but such a fact supplemented by evidence

distinguishing quality of the voice remains the same till the end." The Bible, as every one knows, furnishes an instance where the sense of feeling prevailed over the evidence of the hearing—"The voice is Jacob's voice, but the hands are the hands of Esau. And he discerned him not, because his hands were hairy, as his brother Esau's hands; so he blessed him."

[1] Hendricks *v.* State, 26 Ind. 493; State *v.* Robinson, 39 Me. 150; Carleton *v.* Townsend, 28 Cal. 219; Freeman *v.* Loftus, 6 Jones Law (N. C.), 524; Ellsworth *v.* Moore, 5 Clarke (Iowa), 486. Where names are the same, slight additional evidence will establish identity. Bogue *v.* Bigelow, 29 Vt. 179. See, generally, Kincaid *v.* Howe, 10 Mass. 203; Jones v. Parker, 20 N. H. 31; Brotherline *v.* Hammond, 69 Pa. St. 128.

[2] Rex *v.* Hanes, 3 P. & F. 144; Taylor Med. Juris., 403, 404. Where evidence is competent it should go to the jury, although its weight may not seem very great or important. Harbor *v.* Morgan, 4 Ind. 158; Smith *v.* Henderson, 9 M. & W. 798; Wilton *v.* Edwards, 6 C. & P. 677.

[3] Mullery *v.* Hamilton, 71 Ga. 720.

[4] State *v.* McGuire, 87 Mo. 642; Sitler *v.* Gehr, 105 Pa. St. 577; Hoyt *v.* Davis, 30 Mo. App. 309; Simpson *v.* Dismore, 9 M. & W. 46; Commonwealth *v.* Costello, 120 Mass. 358; Giles *v.* Cornfoot, 2 C. & K. 653; Hatcher *v.* Rochelaeu, 18 N. Y. 87; Kinney *v.* Flynn, 2 Durfee (R. I.), 319; Bell *v.* Brewster, 44 Ohio, 690. See Reed *v.* Gage, 33 Mich. 179; Houk *v.* Barthold, 73 Ind. 21; Jones *v.* Turnour, 4 C. & P. 204; Clements *v.* State, 21 Tex. App. 258; State *v.* Vittum, 9 N. H. 519; Inhabitants of Dennis *v.* Inhabitants of Brewster, 7 Gray, 351; Cates *v.* Loftus, 3 A. K. Marsh (Ky.), 204; Aultman, M. & Co. *v.* Timm, 93 Ind. 158; Douglas *v.* Dakin, 46 Cal. 49.

of relationship or any evidence leading to the inference of identity of person will be sufficient.[1]

§ 39. Identity of animals.—Evidence as to the identity of ordinary domestic animals is proverbially unsatisfactory.[2] Where there are peculiar marks or some unusual natural conformation, or some distinguishing scar caused by accident or some brand, there is not so much uncertainty.[3] Where, however, witnesses undertake to testify to the identity of a domestic animal there is almost invariably conflict and uncertainty. In such cases witnesses simply express opinions, for where there is no peculiar mark, brand or the like, there is really no foundation for anything more than an opinion.[3] The necessity for summoning other facts to the support of positive testimony in such cases is so evident that only the careless thinker or the blunderer will overlook the importance of summoning to the support of such testimony all the facts and circumstances he can command.[4]

[1] Collier *v.* Nokes, 2 C. & K. 1012; Cross *v.* Martin, 46 Vt. 14; Chamble *v.* Tarbox, 27 Tex. 139; Heacock *v.* Lubukee, 108 Ill. 641; Jackson *v.* King, 5 Cow. 237; Graves *v.* Colwell, 90 Ill. 612; Commonwealth *v.* Costello, 120 Mass. 358; Russell *v.* Smyth, 9 M. & W. 810; Brown *v.* Metz, 33 Ill. 339; Farmers' Bank *v.* King, 57 Pa. St. 202; Hunt *v.* Stewart, 7 Ala. (N. S.) 525; State *v.* Bartlett, 55 Me. 200; Stebbins *v.* Duncan, 108 U. S. 32; Mooers *v.* Bunker, 9 N. H. 420; Berkley Peerage Case, 4 Campb. 401.

[2] Where the dispute is as to the identity of ordinary domestic animals, the advice of Polonious is valuable. "Beware of entrance to a quarrel."

[3] At bottom, testimony upon questions of identity, whether of person or of animals, is simply the expression of opinions, except, perhaps, where there is some pecularity or distinguishing mark. Opinions upon such questions are generally of the crudest kind, and seldom have any substantial foundation. We may safely apply to them Cardinal Newman's saying that: "When we speak of a man's opinions what do we mean but the collection of notions he happens to have?" In many cases, it would hardly be venturing too much to say, in most cases, where the opinion concerns identity of persons or animals the notions are the result of bias or prejudice of some sort, and not those of impartial judgment. As this is true, the one who presents such testimony needs be sure that valid reasons support it, and that it is fortified by circumstances.

[4] It is the office of a description in an instrument to furnish the means of identifying the particular property to which it refers. Mills *v.* Kansas, etc., Co., 26 Kan. 574. If the instrument supplies the means of identification it will ordinarily be sufficient. If the

§ 40. **Identity of inanimate personal property.**—There is generally much less difficulty in establishing the identity of personal property than in proving the identity of persons or the identity of domestic animals. As a rule manufactured articles of personal property are not so precisely similar as to make it difficult to identify a particular article although there may be a general resemblance; but there is sometimes real difficulty.[1] Where there are distinguishing marks, as numbers, figures, brands, or the like, they are, as is sufficiently obvious, the most satisfactory evidences of identity. A description in an instrument of writing sufficiently identifies the property if it supplies the means of identifying the particular property to which it refers, and where there is such a description, extrinsic evidence may be resorted to for the purpose of making the identification complete;[2] but where the law requires the de-

instrument suggests proper inquiry and gives reasonable information as to where to make such inquiry and how to pursue it, the description will as a general rule be deemed sufficient. Yant *v.* Harvy, 55 Iowa, 421; Smith *v.* McLean, 24 Iowa, 322; Tindall *v.* Wasson, 74 Ind. 495; Duke *v.* Strickland, 43 Ind. 494; McCord *v.* Cooper, 30 Ind. 9; Ebberle *v.* Mayer, 51 Ind. 235; Connally *v.* Spragins, 66 Ala. 258; Rowley *v.* Bartholemew, 37 Iowa, 374; Fordyce v. Neal, 40 Mich. 705; Farwell *v.* Fox, 18 Mich. 166; Willey *v.* Snyder, 34 Mich. 60; Harris *v.* Kennedy, 48 Wis. 500. There must of course be some particular description, for it will not be sufficient to identify an animal by employing a generic term embracing all animals of a kind, as a horse, one cow, or the like. If part of a description is proper, it is not vitiated by an error nor by surplusage. Hamner *v.* Smith, 22 Ala. 433; Peyton *v.* Ayres, 2 Md. Ch. 64; Reed *v.* Spicer, 27 Cal. 57; Collins *v.* Lavelle, 44 Vt. 230.

[1] Commonwealth *v.* Montgomery, 11 Metcf. (Mass.) 534; Burrill Cir. Ev. 658; Wills Cir. Ev. 127. See, generally, State *v.* Bishop, 73 N. C. 44; American Express Co. *v.* Spellman, 90 Ill. 455; Boren *v.* State, 23 Texas App. 28; Hill *v.* State, 17 Wis. 697; Jupitz *v.* People, 34 Ill. 516; Kelly *v.* State, 1 Texas App. 628; Johnson *v.* State, 1 Texas App. 333; Poage *v.* State, 43 Texas, 454.

[2] Partridge *v.* White, 59 Me. 564; Spaulding *v.* Mozier, 57 Ill. 148; Ellis *v.* Martin, 60 Ala. 394; Hunt *v.* Shackleford, 56 Miss. 397; Goff *v.* Pope, 83 N. C. 123; Bryan *v.* Faucett, 65 N. C. 650; Johnson *v.* Nevill, 65 N. C. 677; Pettis *v.* Kellogg, 7 Cush. 456; Harding *v.* Coburn, 12 Metcf. (Mass.) 333; Burdett *v.* Hunt, 25 Me. 419; Wheelden *v.* Wilson, 44 Me. 11; Goulding *v.* Swett, 13 Gray, 517; Lawrence *v.* Evarts, 7 Ohio St. 194; Eddy *v.* Caldwell, 7 Minn. 225; Winter *v.* Landphere, 42 Iowa, 471; Jordan *v.* The Bank, 11 Neb. 499; Winslow *v.* Insurance Co., 4 Metc. 306; Tompkins *v.* Henderson, 83 Ala. 391. See, generally, Kellogg *v.* Anderson, 40 Minn. 207; Tolbert *v.*

scription to be in the writing, its place can not be entirely supplied by extrinsic evidence. Where the description is so general, or so vague and indefinite as not to supply the means of identifying the particular property, parol evidence can not supply the defect;[1] for, where the writing is required to contain the description, extrinsic evidence can only be resorted to because it is the means of completing the identification supplied by the description in the instrument. It is evident from what has been said that in ascertaining and preparing the facts it is not always safe, by any means, to rely entirely upon the description contained in a written instrument as evidence of the identity of personal property, for leave is often required to obtain competent parol evidence to supplement the description which the writing contains, and, on the other hand, it is not always proper to conclude that the description in the writing, although not specific or definite, is so defective as to be beyond assistance from facts and circumstances.

§ 41. **Identifying real property.**—In ascertaining the facts and taking measures to procure evidence in cases where it becomes necessary to identify a tract or parcel of land, it is often essential to obtain extrinsic evidence in order to identify the land described in a deed or other instrument. It is not true in every instance that the description in a writing so fully identifies the particular tract or parcel of land as to make it unnecessary to resort to parol evidence.[2] The office of a description in a deed is to supply means of identification,[3] and it is not

Horton, 33 Minn. 104; Johnson *v.* Grissard, 51 Ark. 410, S. C. 3 Law. R. Anno. 795.

[1] Herr *v.* Denver, etc., Co., 13 Colo. 406, S. C. 6 Law. R. Anno. 641; Richardson *v.* Lumber Co., 40 Mich. 203; Nicholson *v.* Karpe, 58 Miss. 34; Crosswell *v.* Allis, 25 Conn. 301; Duke *v.* Strickland, 43 Ind. 494; McCord *v.* Cooper, 30 Ind. 9; Frost *v.* Beekman, 1 Johns. Ch. 285; Jennings *v.* Wood, 20 Ohio, 261; Hutton *v.* Arnett, 51 Ill. 198. See, generally, Vawter *v.* Griffin, 40 Ind. 593; Whittemore *v.* Gibbs, 24 N. H. 484.

[2] Patton *v.* Goldsborough, 9 S. & R. 47; Abbot *v.* Abbot, 51 Me. 575; Hicks *v.* Davis, 4 Cal. 67; Hill *v.* Mason, 7 Jones (N. C.), 551; Cassiday *v.* Conway, 25 Pa. St. 244; Raymond *v.* Longworth, 14 How. 76; Waterman *v.* Johnson, 13 Pick. 261.

[3] Rucker *v.* Steelman, 73 Ind. 396; Sherman *v.* McCarthy, 57 Cal. 507; Anderson *v.* Hancock, 61 Cal. 88; Holloway *v.* Galliac, 47 Cal. 474; Irwin

necessary that the particular parcel or tract should be directly and completely identified by the description. It is to be remembered that where the instrument is executed to convey lands, or to provide for the conveyance, it must contain a description of the land or estate, for the statute requires such instruments to be in writing, and a description is an essential part of the writing. Where there are specified monuments, statements of courses and distances yield, for the theory of the law is that deeds are made with reference to an actual view of the premises by the parties to the contract,[1] so that it is of importance in many instances to secure accurate knowledge of the location of the monuments.

§ 42. **Identifying documents.**—It is often incumbent upon the advocate in ascertaining the facts and taking steps to procure competent evidence to make the facts available, to provide for the identification of written instruments. There are, of course, many cases where it is not difficult to obtain satisfactory evidence of identity; but there are cases where there is real difficulty in securing the necessary evidence.[2] It often occurs that there is no direct evidence upon the question of identity, and in such case resort must be had to circumstantial evidence.

§ 43. **Examination of client.**—An examination of the client is not well conducted unless it reveals his weakness as well as his strength. His peculiarities, when known, can be provided

v. Towne, 42 Cal. 326; Thompson *v.* Thompson, 52 Cal. 154.

[1] Davis *v.* Rainsford, 17 Mass. 207 (210); Evansville, etc., Co. *v.* Page, 23 Ind. 525; Howe *v.* Bass, 2 Mass. 380; Frost *v.* Spaulding, 19 Pick. 445; McPherson *v.* Foster, 4 Wash. C. C. 45; Lodge *v.* Barrett, 46 Pa. St. 477; Harris *v.* Hull, 70 Ga. 831; Frost *v.* Angier, 127 Mass. 212.

[2] Photographic copies have been used with advantage in identifying documents and proving handwriting. Luco *v.* United States, 23 How. (U. S.) 515; Daly *v.* Maguire, 6 Blatch. (U. S. C.) 137; Hynes *v.* McDermott, 82 N. Y. 41, S. C. 37 Am. R. 538; Brookes *v.* Tichborne, 2 Eng. L. & Equ. 374; Marcy *v.* Barnes, 16 Gray, 161. See, generally, Taylor Will Case, 10 Abb. Pr. 300; Duffin *v.* People, 107 Ill. 113, S. C. 47 Am. R. 431; Eborn *v.* Zimpelman, 47 Texas, 503, S. C. 26 Am. R. 315; Tome *v.* Parkersburg, etc., Co., 39 Md. 36, S. C. 17 Am. R. 540; Marcy *v.* Barnes, 16 Gray, 161, S. C. 77 Am. Dec. 405; Foster's Will, 34 Mich. 21; Howland's Will, 4 Am. Law. Rev. 625.

against when they are such as to prejudice him, or their power for good can be augumented when they are such as to bring him favor. His judgment as to the materiality of testimony, oral or written, can not be allowed to supplant that of the advocate. If there are any written instruments, contracts, notes, receipts, letters or the like, within his reach, they must be secured, and every scrap of them examined by the advocate, and in no event should it be left to the client to determine their materiality. If the consultation with him discloses a propensity to do much talking, he should be not only advised, but commanded, to be silent. Oral admissions are often, as we have said, tortured much beyond their meaning, and a talking client will open the way for much prejudicial testimony.

§ 44. **Control of the case.**—All letters concerning the case should be written or dictated by the advocate. All negotiations, after the advocate has taken charge of the case, it is his duty to conduct, and of this the client should be informed. It is the right of the advocate to insist that his advice be strictly followed, and in the outset he will do well to so inform his client.

§ 45. **Tendency of clients to exaggerate.**—Clients stating their own claims are prone to exaggerate them. The longer they think over the matter the larger their claims grow. The prudent advocate, bearing this in mind, will not be influenced to press a claim so greatly magnified as to seem ridiculous. A party who demands an unreasonable thing creates a bad impression at the outset, which is likely to cling to the cause as tightly as the Old Man of the Sea clung to Sinbad the Sailor.

§ 46. **Written statements no substitute for personal examination.**—Written statements, whether prepared by the client or the witnesses, are not substitutes for personal examinations. The reason for this is manifest; but, obvious as the reason is, advocates often make costly mistakes in accepting written statements and dispensing with personal examinations of the wit-

nesses. Personal contact with the witnesses gives information and confidence that written statements can not supply.

§ 47. **Information as to client's business.**—Information as to the character, business and associates of the client is important for more reasons than one. It is important in the work of selecting the jury. Men carry their prejudices into the jury box, and are often controlled by them; sometimes they willingly yield to them, and sometimes they are unconsciously controlled by them. In passing through the minds of men warped by prejudice facts are tortured and twisted from their natural effect. A piece of white paper can no more pass through a pail of ink without being discolored than can facts pass uncolored through a mind filled with preconceived opinions and prejudices. Such a mind is not unlike a vessel filled with smoke—all that goes into it is darkened.

§ 48. **Prejudice of jurors.**—Jurors belonging to one class are often so bitterly prejudiced against men of another class that they will not award them justice if there is the baldest pretense for evading duty. Indeed, in many instances, prejudice so dominates duty that justice is denied without the semblance of an excuse. Pursuits make men clannish, and except when envy or rivalry exists, men engaged in like pursuits will stand together as if engaged in a common cause. The books contain many instances where unjust verdicts have resulted from jurors allowing their prejudices in favor of those engaged in like pursuits to control their judgment. A jury of landlords will be very likely to deal unjustly with a tenant contesting a case with his landlord, and a jury of tenants in a like case would be slow to deal out justice to the landlord however strong his case. Farmers are almost always on the side of farmers, and there is usually an impression in their minds in favor of one of their own class, which must be dislodged before the opposite side can secure a fair hearing. A jury of physicians, unless of opposite schools, would be a very dangerous one for the plaintiff in a case of malpractice. Railroad men on juries are almost always favorable to a railroad company, and men who dislike great corporations,

or who are jealous of power, or who view with envy corporations that have acquired wealth and influence, are almost always unalterably set against a railroad company.

§ 49. **Object of procuring knowledge of client's standing.**—These hints, we know, are of things so plain that mention seems unnecessary; and what we suggest is, we know, old—old, at least, as the time of Plato's pastry-cook—but, for all that, these hints may serve a useful purpose in arousing attention to plain considerations often forgotten or overlooked. But passing to a somewhat different phase of the subject, we shall find other reasons for acquiring a thorough knowledge of the client. It is not always expedient to select jurors who are acquainted with the client the advocate represents. Some men fare better at the hands of strangers than of acquaintances. A man whose reputation is not of the best is often safer in the hands of strangers than in the hands of neighbors. Nor is it always best to select acquaintances as triers even where there is no infirmity in the client's reputation, for peculiarities of character may create adverse prejudices. But the better the jurors know a thoroughly good man the safer his cause is in their hands.

§ 50. **Necessity of consultation with witnesses.**—There are cases where steps must be taken without an instant's delay, and in such cases the advocate must act upon the information given by his client; but where there is time for consultation with the witnesses it should be held before the action or suit is instituted. This is expedient not only for the reason that it gives the advocate a firmer grasp of his case, but for the additional reason that it often enables him to procure an unprejudiced history of the facts. Mr. Chitty says: "It will, moreover, frequently occur that if a minute inquiry into the facts and evidence be made in the first instance, before the defendant has even heard of any intended litigation, the truth will be better elicited than if the investigation were delayed until after the defendant had cautioned neighbors and witnesses

from making any communications that might be adverse to his interests."[1]

§ 51. **Reasons for promptly examining witnesses.**—There is still another reason for promptly examining witnesses. Time dulls the perceptive faculties and quiets the interest and ardor that the mind feels in an occurrence freshly brought before it. Men are less affected by a thing long passed than by one of recent date. If an advocate delays in investigating a case he will do his work much less efficiently than he would with all his faculties aroused by a matter fresh in his mind. It is the experience of most advocates that on the second trial of a cause, where no new facts are developed, the mind acts with much less vigor and power than on the first trial. This is so because the facts do not strike with the same force they do when the mind is aroused by a thing heard as of recent occurrence, and as affecting a matter upon which immediate action is to be taken. What is true of the advocate is true, although in a less degree of force, of a witness, for the lapse of time weakens his memory and dulls his faculties. It is, therefore, prudent to have the preliminary examination take place with the least possible delay.

§ 52. **Fastening the facts in the mind.**—If the facts are once thoroughly fixed in the mind of the advocate the excitement of the actual contest will bring them out with undiminished strength. If the impression is made when the mind is warmed by the new matter which invokes and arouses its powers, the impression is not likely to fade, but if no impression is made at the outset when the mind is in a condition to receive and retain all that is presented, it is not probable that a strong one can be made at any subsequent period. Mr. Chitty not only recommends promptness in making a preliminary examination of the witnesses, but he also recommends that the questions and answers of the principal ones be stated in writ-

[1] 3 Chitty Gen. Pr. 118.

ing.[1] If there be reason to fear that the witnesses will change their statements, either from defect of memory or through the influence of corrupt practices, this course is expedient, but the advocate should not trust to the written statement. It is his duty to fasten the facts in his mind, for it is only by this course that he can give them their just weight. The facts he must know, not merely remember. In dealing with the facts the advocate goes far beyond the witnesses, for he exercises other faculties than that of memory. He must weigh, arrange and mould the facts into a case, framed and constructed in his mind. He must have a theory into which he can place his facts. This he can do only by making the facts a part of his thought-knowledge.

§ 53. **Assumption that client does not know the law.**—In his investigation of the facts it is the duty of the advocate to assume that his client has no knowledge of the law. This assumption must control the interview with the client, and no assistance can be expected from him upon what he will regard as mere immaterial and formal matters. The investigation must be so conducted as to bring these matters to the attention of the client. If they are forgotten by the advocate they will be entirely lost sight of. There are many things indispensably essential to success, which to laymen seem unimportant, and these things must be brought to the mind of the client by his counsel. In many instances it is essential that a demand should precede the action; in others, that a tender should be made; in others, that a notice should be served. Of these and like matters the counsel must inform his client, and give him the necessary instructions.

§ 54. **Taking client's opinion.**—Although the advocate must assume that the client has no knowledge of the law, and should not seek his opinions on law questions, yet it is always wise, if the client be a person of intelligence, to secure his theory of the justice of his case. It often happens that the client will

[1] 3 General Pr. 120.

form strong opinions of his rights, and place them in a homely, yet forcible, way on a foundation of natural justice. The judgment of the client may thus often aid in presenting the case to a jury, for jurors are more strongly influenced by what they conceive to be natural justice than by that which they regard as artificial law made by lawyers. The biographies of lawyers contain many instances where the greatest advocates have won their causes by adopting the statements of their clients. Advocates do often lose force by dwelling upon rules of law instead of appealing to a sense of justice innate in every man, and so, too, they often lose force by employing law terms when more familiar ones would find a deeper lodgment in the minds of jurors. The help they most need may sometimes be supplied by the client's theory of the justice and right of his case.[1]

[1] See Collins' Cicero, 85.

CHAPTER II.

ASCERTAINING AND PREPARING THE LAW OF THE CASE.

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§ 55. **What is to be assumed at the outset.**—At the outset, the searcher for the law of the case must assume that the case for which he is to find the law belongs to a particular class, and is governed by a settled principle. Before going to the books the investigator must have a definite conception in his own mind of what he goes there to find. This conception, if clearly formed, will be a provisional hypothesis, which will give direction and method to the investigation. Without a definite hypothesis the investigation will be an aimless one, lacking both direction and method. As well go into a forest to find a tree without knowing what tree is wanted as to attempt to

search the books without having some definite idea of what is to be found.[1] The wildest conjecture as to what is the law is better than no conjecture. A provisional hypothesis, however unsound, is infinitely better than an aimless and purposeless search. Investigation, it is true, may prove the hypothesis to be utterly unsupported, but if it does, the exposure of the error will serve to reveal the truth. An error clearly observed nearly always points an investigator to the true direction.[2]

§ 56. **Provisional hypothesis.**—The provisional hypothesis is a mere working conjecture, not a fixed theory. The investigation is not conducted for the simple purpose of proving the soundness of the hypothesis, but for the purpose of testing it. A case is submitted for investigation, and the advocate assumes that it belongs to a designated class, and falls under a particular rule, and on this assumption begins his examination, not for the purpose of establishing the assumption, but for the purpose of ascertaining whether it can be made good. His assumption gives direction to his work, for it places an object before him toward which his steps must be taken. Without such an object before him there could be neither line to follow nor method to control his work. There is, however, a danger which is to be avoided. It is the nature of men to be fond of their own creations, and to cling to them with unreasoning

[1] "For, as Plato says, a searcher must have some knowledge of the thing he searches after, otherwise he will not know when he has found it." Bacon.

"All the greatest discoveries of the human intellect in the various sciences," says Mazzini, "have originated in hypotheses, afterward verified by study."

[2] Littleton, in closing his great work on Tenures, says: "And know, my son, that I would not have thee believe, that all which I have said in these books is law, for I will not presume to take this upon me; but of those things that are not law, inquire and learn of my wise masters learned in the law; notwithstanding albeit that certain things which are moved and specified in the said books are not altogether law, yet such things shall make thee more apt and able to understand and apprehend the arguments and the reasons of the law, etc. For by the arguments and reasons in the law, a man more sooner shall come to the certainty and knowledge of the law."

tenacity, and this influence sometimes leads advocates to sacrifice a cause to a favorite hypothesis.

§ 57. **Use of the provisional hypothesis.**—In the search for the law of the case the advocate proceeds much as a philosopher who seeks to discover scientific truths. His provisional hypothesis is a means to an end. It is not a position to be defended at all hazards, but one to be held or surrendered as investigation may result in declaring it to be tenable or untenable. In seeking the law of the case the advocate exercises functions similar to those of the judge. But his process differs from that of the judge and the philosopher, for he seeks a rule that, applied to the facts, will secure a judgment for his client. This confines his search and colors his reasonings. But in this work he is not a partisan, or at all events he should not be a partisan, for he seeks materials that may be used in the construction of a theory which will bring him success, and cool, unimpassioned investigation is necessary to keep out unsound and unsuitable materials. After the materials have been gathered and woven into the theory of the case, then he becomes a partisan, for no man who earnestly takes up another's cause can avoid becoming a partisan. All doubt and hesitation are then at an end, and the position upon which the case is planted will be maintained with all the vigor and strength that is at command. While the investigation is in progress the coolness and impartiality of a judge or philosopher give strength and certainty; but when that work is finished the weapons of the advocate are drawn, and the functions of philosopher and judge are displaced by those of the combatant. The advocate is no longer neutral; thenceforward his work is not to find some position, but to maintain the one he has found and occupied.

§ 58. **Object of the search for the law.**—The law for which one seeks with a real case before him is the law of that particular case. It will not avail him to know many rules if he does not know the rule which governs the case he has in hand. An

advocate with a case before him has actual work to do, not merely principles or rules to commit to memory. An architect may be learned in his profession, but if he does not know what kind of a bridge is required at a particular place on a particular stream, he can not put the bridge there that is needed. No more can an advocate, however much he may know of the law, successfully conduct the trial of a particular case unless he knows the law of that case. Books can not tell him what the law of that case is, although with the aid of books, or of previously acquired knowledge, he may reason it out; but reason he must, and the more profound his learning the more certain he will be to reach a right conclusion. His previous knowledge must, at least, be sufficient to enable him to intelligently construct a provisional hypothesis; for if he is not able to do this he will be unable to lay out a line of investigation, and much less will he be able to follow it through the difficult paths it traverses. The man who has not fitted himself to conduct causes in judicial tribunals by a long course of study of the principles of jurisprudence is not an advocate; "for," to borrow something of the language and more of the thought of Cicero, "to flutter about the forum, to loiter in courts of justice and at the tribunals of the prætors, to undertake private suits in matters of the greatest concern, in which the question is often not about fact but about equity and law, to swagger in causes heard before the *centumviri* when a man is utterly ignorant 'of the principles of jurisprudence,' is a proof of extraordinary impudence."[1]

§ 59. **Rudimentary principles.**—In giving to a man the title of advocate it is implied that he is learned in the law.[2] It is assumed, therefore, that an advocate has a knowledge of the rudimentary principles of the law and of the rules of pleading, practice, and evidence.[3] But one who assumes that his

[1] Oratory and Orators, Bk. I, xxxviii.

[2] "Remember," says Erskine, "that no man can be a great advocate who is no lawyer."

[3] This may not be a safe assumption to make in favor of all practitioners. "Whereas," says Edward Bulstrode, "if many of our young practitioners had, like Pythagoras his scholars, kept silence for some years and consulted with their books, they would be the better enabled to give the reason of the law."

preparatory studies have fully equipped him for the contests of the forum is sadly deceived. Jurisprudence is "the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns."[1] Cases as diverse as human concerns are the subjects of study and investigation in advocacy, and to these various and often diverse cases, the principles of what Burke calls original justice must be applied. The science of jurisprudence is, as Judge Story says, "of such vast extent and intricacy, of such severe logic and nice dependencies, that it has always tasked the highest minds to reach even its ordinary boundaries."[2]

§ 60. **The search for the law.**—The most learned advocate has many a weary hunt for the law of his case. His learning guides him in his search, but it does not always yield him the support he needs. It points him to the spring and shows him the road to the fountain, but it seldom does more. The search in which his learning is his guide leads him through the decisions of the courts and the works of the great lawyers. These are the sources from which the law of the case must be obtained.[3] If a text-book be the work of a philosophic lawyer, it will discuss the fundamental principles of the law; if the decision be that of an able judge, it will show the application of those principles to particular cases. It is, therefore, to be expected that the clearest knowledge of the principles will be conveyed by the text-writers, while the clearest conception of their application will be conveyed by the judicial judgment. Both the principles and their application ought thus to be sought and found.

§ 61. **Cases and principles.**—Jurisprudence is a practical science. It is a science of principles. Cases illustrate principles, but they do not create them.[4] The law is not a mere collection of cases strung together upon a slender thread of re-

[1] Burke. Reflections on the Revolution in France.

[2] Story's Life and Letters, Vol. III, 145.

[3] "Whoever goes in quest of knowledge, let him fish for it where it is to be found." Montaigne.

[4] Paul *v.* Davis, 100 Ind. 422.

semblances. The learning of the advocate available for practical use is of principles and their application. Professor Washburne says: "The learning of the lawyer does not consist so much of principles as of the relation which these hold to each other in their general application."[1] There is much of truth in this statement, yet there is enough of error to make it misleading if taken without qualification. It is impossible to understand the relation of principles to one another without a thorough knowledge of the principles themselves. This is the basis of scientific knowledge, without which there will be little hope of successfully making a way through the thorny and intricate labyrinths of jurisprudence.

§ 62. **Text-books.**—The text-books which are to be regarded as the sources of knowledge are those which discuss principles, and not those which collect cases without discussing them. Many of our modern law-books are not scientific treatises, and can not be accepted as authority, for they are little else than digests. They may be valuable as indexes, but they are not the books that should be studied. It is not, however, always safe to implicitly rely on text-books of the highest character, for errors in them have often been exposed by the courts.[2] On the other hand, text-writers have detected and corrected the errors of the courts.[3] A knowledge of principles, without capacity to apply them, is of no practical value. Indeed, a knowledge of principles without a knowledge of their practical application is almost as likely to result in harm as good.[4]

[1] Study and Practice of Law, 64.

[2] Shurtleff *v.* Millard, 12 R. I. 272, S. C. 34 Am. Rep. 640; Robinson *v.* Weeks, 56 Me. 102; Union Bank *v.* Munster, 57 L. J. (N. S.) 124; House *v.* Alexander, 105 Ind. 109, S. C. 55 Am. Rep. 189; Ram's Legal Judgments, Chap. XII. Some of the English judges have censured, but not justly, as we think, the practice of citing the works of living writers. 37 Albany L. J. 206. "Take heed, reader," says Chief Justice Coke, "of all abridgments, for the chief use of them is as of tables to find the books at large, but I exhort every student to read and rely on the books themselves." 5 Rep. 25. See, also, preface to 4 Rep. X.

[3] Ram Legal Judgments, 169.

[4] Quintilian says that the advocate "must not merely look to principles, but must have them in readiness to act upon them; not as if they had been taught him, but as if they had been born him."

§ 63. **General principles.**—Mr. Warren says that "It requires the nicest discrimination to ascertain whether a particular case falls within the general rule, or is governed by some of its endless limitations and exceptions, and this discrimination must be the result of calm, leisurely and extensive study and practical experience. General principles are edge tools in the hands of the legal tyro, and he must take care how he handles them."[1] The reported cases bear out Mr. Warren's statement that "general principles are edge tools," to be carefully handled; but, for all that, the workman must have these tools. His advice to study calmly and leisurely is wise as applied to the mere student, but it is not safe for the lawyer who is preparing a case for trial to follow it, for, when the work of preparation begins, the mind must be aroused to its utmost. The investigator should not work leisurely or calmly, but determinedly, and with an almost fanatical enthusiasm. His mind must be concentrated upon the work. He must, as De-Quincey says, "have an eye single to the assault." This earnestness and enthusiasm, it is obvious, is not compatible with a leisurely and calm deliberation. All advocates who have had long experience know that when the work of determining the law of the case actually begins there is a warmth and a glow that arouses the faculties and excites them to energetic and effective work. There must be a purpose and a determination in the search strong enough to arouse the mind to active effort, or it is very likely to be a fruitless quest.

§ 64. **Determining weight and influence of decided cases.**—In determining the weight and applicability of a decided case the first work is to ascertain what points were really decided, for much that is found in the opinions of the judges is mere argument and illustration. These arguments and illustrations merit study, for, while they are not declarations of the law, yet they contain statements of analogous legal principles, and often refer to authorities that afford very valuable assistance in the investigation. When the reasoning of the case is against

[1] Warren's Law Studies, 325.

the view of the investigator he should trim the case down to the exact points presented and decided, and then test the reasoning by comparison with principle. It is never safe, it may be noted in passing, to rely upon the reporter's head-notes of a case. They are not always correct, and even when correct they do not convey that close and distinct perception of the case which is indispensably essential to a full comprehension of its force. Sometimes the dicta contained in the opinion will be of weight because of the learning and ability of the judge by whom the opinion was written; but even in such a case they are not part of the decision of the court.[1] What is said by the judge in the course of the opinion must be confined to the facts presented by the case in which the opinion was delivered,[2] and it is always important to carefully ascertain the points of agreement, and discriminate the points of difference between the reported case and the one under examination. The greater the number of decisions that sustain a proposition the more certain the conclusion that it was correctly decided, for these are instances of the concurrent judgments of men learned in the law; but it is not always safe to assume as true a proposition sustained by a long line of cases, for close investigation may lead, as has not infrequently happened, to the discovery that the entire line of cases rests upon a single ill-considered and wrongly decided case, and that, consequently, all the cases must be overthrown. Where the cases, like the Swiss troops, fight on both sides, then the investigator must select such cases as seem founded on solid principles, and lead to good results. It is, however, often very difficult to tell which of two lines of conflicting cases should be followed, and the only safe course is to find some general principle that will serve as a standard by which to test the cases opposed to the views of the investigator. This it is sometimes difficult to do, for, it is said, "the

[1] Rohrback *v.* Germania Fire Ins. Co., 62 N. Y. 47, 58; Frantz *v.* Brown, 17 Serg. & R. (Pa.) 287, 292; Bates *v.* Taylor, 87 Tenn. 319; Wixson *v.* Devine, 80 Cal. 385.

[2] Cohens *v.* State of Virginia, 6 Wheat. (U. S.) 399; Carroll *v.* Lessee, 16 How. (U. S.) 275, 286.

comparative weight or credit of authorities where they conflict is a matter of professional science which is not regulated by any determinate rule."

§ 65. **How a decision should be considered.**—A decision must, as we have said, be considered with reference to the facts out of which the questions of law arose.[1] It was said by Lord Manners that "It is always unsatisfactory to abstract the reasoning of the court from the facts to which that reasoning is meant to apply. It has a tendency to misrepresent one judge and mislead another."[2] The tendency of the reasoning of the court considered apart from the facts to mislead, is one reason why it is unsafe to rely upon the text-books, for they often assert as a rule what the court states as an argument. The danger of being misled is much greater to the advocate engaged in the investigation or argument of a cause than to a judge who hears both sides of the question discussed. The only security for the advocate is in a careful analysis of the facts and a close comparison of the legal doctrines declared with the fundamental principles of law. It is not an unfrequent occurrence for an advocate who has not given the cases relied upon by him a thoughtful study to be humiliated by having them turned against him. The reports contain many instances where, even on appeal, cases have been cited which have furnished weapons to the enemy. It often happens that cases are decided on particular circumstances, and such decisions can only be relied on where the circumstances in the reported case and in the one under investigation are the same. It is seldom prudent to build on cases of this character, for they are seldom well decided. They are, indeed, more frequently so narrow as not to be entitled to any rank, even the lowest, as authoritative precedents.

§ 66. **Considerations which affect weight of decisions.**—Various elements enter into a consideration of the question of the weight to be assigned a judicial decision. A well reasoned

[1] See § 64, *ante*.

[2] Revell *v.* Hussey, 2 Ball & Batty, 286.

and carefully considered case is entitled to more weight than one not well supported by reason and not thoroughly considered.[1] Mr. Bishop seems to take ground against any reasoning by the judges in their opinions, but we can not concur in his view. The reasoning, if sound and strong, brings strength and respect; if weak and inconclusive, leads to the detection of fallacies and errors, and, ultimately, to the final overthrow of the case. The point of view which Mr. Bishop occupies is that of a text-writer, and his judgment seems somewhat warped by his adherence to his peculiar notions of the authority of text-books. An opinion concurred in by all the judges composing the court is generally, but not always, of more weight than one delivered by a divided court. The dissenting opinion of a great judge will sometimes command higher respect than that of his associates, but the decision of the majority is alone authoritative.[2]

§ 67. **Judicial decisions not the law itself—When authority.** —Judicial decisions are not, in a strict sense, authority, except in the jurisdiction where they are pronounced. The text-writers, and the courts generally, speak of these decisions as authority, but beyond the court's jurisdiction they have force only as arguments. They are not authority in the sense of having the force of absolute law, even in the jurisdiction where the court pronouncing them is the highest judicial tribunal.[3] They may be overruled, and they will be overruled if clearly opposed to

[1] But it is said that a *per curiam* opinion is one where the court are all of one mind, and the case is so clear as not to need an extended discussion, and that it has the same weight as any other opinion. Clarke *v.* Western Assurance Co., 146 Pa. St. 561, S. C. 28 Am. St. Rep. 821.

[2] For a discussion of this interesting subject read Chapters xii to xix, Ram on Legal Judgments; Bishop's First Book of the Law, Book IV, Chapter xxiii; Heard's Criminal Pleading, Chapter i.

[3] They are only evidence of what the law is. Swift *v.* Tyson, 16 Pet. (U. S.) 18, Per Story, J.; New Orleans Water-Works Co. *v.* Louisiana Sugar, etc., Co., 125 U. S. 18, S. C. 8 Sup. Ct. Rep. 741. See, also, Wixson *v.* Devine, 80 Cal. 385.

principle,[1] although courts are always reluctant to change their decisions.

§ 68. **Obtaining principles—Analogical reasoning.**—Principles for the government of particular cases are in many instances obtained by a process of analogical reasoning. The resemblance between the cases must be both in the facts and in the law. "The argument from analogy is forcible only when the resemblance is close; if there are marked points of difference between the conclusion deduced and the examples taken as leading by analogy to it, the argument fails."[2] In logical language, the marks of the cases taken as examples and the marks of the case for which a governing principle is sought must be the same in essence. It is not, however, always necessary that the forms of the marks be the same, but in essence they should be as nearly identical as possible. The closer the resemblance the stronger the argument. Forcible as the argument from analogy often is, yet it is nevertheless often a source of error, not only in open discussion, but also in the investigation made in private. "There is no greater fallacy," says a learned judge, "than that of carrying an analogy too far, and supposing that, because there is a resemblance between two things in one point, they therefore correspond in every respect."[3] A general likeness may exist between many cases, and yet upon one point the difference may be so great as to completely destroy the analogy. The analogue upon which the reasoner bases his mental process requires examination from every side, so that its points, or marks, may take a prominent place in the mind, and not have a place as an indistinct image perceived only in shadowy outlines. The mental image of the analogue, and that of the case for which it is supposed to supply a rule, should take their places in the mind side by side so clearly that the comparison which the mind makes may bring fully into light every mark or point. No other course will en-

[1] Paul *v.* Davis, 100 Ind. 422; Rumsey *v.* N. Y. & N. E. Ry. Co., 133 N. Y. 79, S. C. 28 Am. St. Rep. 600.

[2] Goodwin *v.* State, 96 Ind. 550(573).

[3] Lord Chancellor Cresswell in Keats *v.* Keats, 32 Law Times, 321.

able the solitary reasoner to escape error, nor will any other course put it in his power to convey his judgment to another mind with clearness and strength.

§ 69. **How to search text-books—Tables of cases.**—The shortest and the safest method of searching for the doctrine of the text-writers upon any particular subject is to look through the table of cases and find where a leading case is discussed. It is not always easy to determine under what head a particular principle which it is desired to examine should be indexed, and it is often difficult, and sometimes impossible, to discover what one is in search of in the index. The work of hunting through an index is frequently a perplexing and unsatisfactory one; if, however, the title of a leading case is known, it is short and easy work to find the discussion of the doctrine which it declares. But there is another important reason for acquiring and retaining the names of cases, and that is, it enables the investigator to run through the citation of cases in the reports, digests or tables, and ascertain whether the case has been denied, distinguished, criticised, or approved. A case that has not been firmly rooted in the law should not be relied on without examining the table of cases cited, to ascertain whether it has or has not been subsequently approved, denied, or distinguished. By reading the comments of the text-writers and judges upon a decided case a clear and distinct perception of its force is obtained, and a ready and forcible application of its doctrines can be made. So, too, the examination of subsequent discussions often furnishes important hints as to the proper limitations of the general doctrine, and furnishes, also, suggestions as to the change which a difference in the facts would produce. It is, therefore, prudent to carefully follow such a case in its course through the text-books and reports. The tables of cases, or the books containing citations of cases, will show whether the case has been approved, limited, distinguished, or overruled, and a study of the comments upon it will bring all its points strongly and clearly into view. The doctrines of many cases have been ex-

tended because wise and salutary; the doctrines of others limited because not meriting extension; cases have been discriminated because, while apparently alike, in reality they were different; and others have been overruled because they were wrong in principle. The reasoning of the courts in all these instances is valuable, because it lights up many dark places, and brings into view obscure points.

§ 70. **Effect of increase in number of reported cases.**—The immense number of reported cases has not, as some suppose, diminished the work of the lawyer or rendered it less important for him to think for himself. On the contrary, the increase in the number of decisions has made it all the more important that he should work out all legal propositions in his own mind. It can not with safety be assumed that any case, or the doctrine of any text-writer, can be taken as a precedent. Among so many thousand cases there must be collision and conflict, and from this conflict new and juster views emerge. The wealth of argument and illustration found in the decisions of the courts is very great, and in cases of conflict it often requires a long continued study and keen mental vision to decide which "hath the better reason." It is by no means every case or every statement of a text-writer that can be elevated to the dignity of a precedent, and the lawyer must determine for himself to what rank the decision of the court or the doctrine of the writer shall be assigned. It is said that the great number of decisions "tends to reduce the value of any one decision as a fixed element in jurisprudence," and there is much of truth, but yet something of error, in the observation. It is true that the great number of decisions brings into the fields of legal comtemplation new arguments and elements; but while these may weaken the value of cases not founded on solid principle, they make more prominent those that are, and add to their strength. But the increase in the number of decisions makes it more difficult to determine what shall be considered precedents, and casts the lawyer upon his own mental resources. There is much truth in the observations of a recent

writer who says: "There never was a time when an ignorant and ill-read lawyer was so hard put to it to find on any controvertible point a safe authority on which he could safely rest. But on the other hand it has never been so easy for an intelligent and well-read lawyer to master any controvertible question and prepare to maintain himself with sound reasoning and acute and proper distinctions. The force of the lawyer, which used to rest to a considerable extent on oratory with the jury and a book with the judge, now rests rather on hard facts with the jury and close logic with the judge. This, much as those accustomed to old processes may regret it, and painful as may be the effort of some to adapt themselves to it, is a wholesome change. It enchances the value of the mental force of counsel, gives more influence to his actual knowledge of the law as distinguished from his memory of what is in the books, and compels competition in reasoning, which thus becomes the life of the bar."[1] It is, perhaps, true, as the writer asserts, that the increase in the number of decisions has rendered the possession and use of mental force more necessary; but the lives of the successful advocates prove that they have always relied less on cases than on principles deduced by their own thoughts from books and cases. The chief object of the study of cases has, with really strong men, ever been to obtain a knowledge of the principles of jurisprudence, and to put it in form for use.[2]

§ 71. **Generalization of cases.**—Austin well says: "If our experience and observation of particulars were not generalized, our experience and observation of particulars would seldom avail us in practice. To review on the spur of the occasion a host of particulars, and to obtain from those particulars a conclusion applicable to the case, were a process too slow and uncertain to meet the exigencies of our lives. The inferences suggested to our minds by repeated observation and experience are, therefore, drawn into principles or compressed into maxims. These we carry about us ready for use, and apply to in-

[1] 22 Central Law Journal, 264.

[2] See 39 Albany Law Journal, 120.

dividual cases promptly or without hesitation, without reverting to the process by which they were obtained, or without recalling or arraying before our minds the numerous and intricate considerations of which they are handy abridgments."[1]

§ 72. **Case lawyers.**—Lord Abinger, an acute observer, says: "I may observe, what a long course of experience has taught me, that the lawyers least to be depended upon are those who are in constant pursuit of cases in point to govern their judgment, and who, therefore, seldom have sufficient knowledge of principles to judge for themselves."[2] A man who depends upon his memory of cases can not successfully make his way through a contest where the real test of superiority is not so much what a man has in memory as what he can do with what he has. A mechanic may have in his shop a great number of the best tools in the world, but if he has not the skill to use them they are of little benefit to him; and so with the lawyer. He may have in memory many cases, but if he has not the skill to use them they are of no benefit to him.

§ 73. **Exceptions to general rules.**—There are very few general rules to which there are no exceptions, and the exceptions are sometimes as important as the general rules themselves.[3] Close analysis and keen discrimination are required to discover under what principle a case rightly falls. Whether a case falls under a general rule or under some exception to the rule can not always be determined by a mere reference to books, but the mental problem is one that must be worked out in the mind of the lawyer. Legal knowledge that will avail in the actual contests of the forum must be something more than rules committed to memory and precedents conveniently arranged for reference, for real legal knowledge is the product of the thinker's own mind. Locke wisely says: "Reading furnishes the mind only with materials of knowledge; it is thinking makes what we read ours. We are of the ruminating kind, and it is not

[1] 1 Austin's Jurisprudence, 118.

[2] Memoir of Lord Abinger, 45.

[3] "There is no rule but what may fail." Plowden's Com. 162.

enough that we cram ourselves with a great load of collections; unless we chew them over again, they will not give us strength and nourishment."[1] The knowledge of the lawyer will be of little use to him unless it can be made available at command, for he must use it, not in the quiet of the study, but in the bustle and excitement of the forum. However richly his memory may be stored with rules and precedents, he will be poor indeed if his resources can not be called into use at a moment's warning. No profession requires a wider knowledge than that of the advocate, and there is none which requires a more decisive and prompt use of knowledge laid up in the mind. With him knowledge is "to be regarded, not as a pure reception and reflection, but as an inner activity."[2] Clear and distinct ideas of the principles should be secured and arranged under proper names, for names enable us to so keep what we acquire as to reach it at call. As Locke says: "The sure and only way to get true knowledge is to form in our minds clear, settled notions of things, with names annexed to those determined ideas."[3]

§ 74. **Discrimination.**—No one can be a great lawyer unless he possesses keen discrimination.[4] Where the power of discrimination is wanting, a blurred and indistinct impression is produced upon the mind. Such a mental image is much like

[1] Conduct of the Understanding, 63. "Is Studio a learned man, I make a distinction. Studio, has, to be sure, acquired a certain science, but of profound science, science which is broad and lofty, good and true science, he has none. Studio reads night and day, but all that goes into his head is spoiled there, like a liquid in a wretched cask. A troubled brain, an adulterated judgment, an unlucky memory,—that is Studio." Meditations of a Parish Priest, 56.

[2] Fundamental Concepts, Professor Eucken, 16.

[3] Conduct of the Understanding, 57.

[4] A keen discrimination is essential to prevent the useless overloading of a theory with matters of law or of fact which obstruct the strong and appropriate movement of the trial. Advocates lacking the faculty of discrimination often encumber their case to its great harm, forgetting Bacon's saying, that "If a man maketh his train longer he makes his wings shorter." Like the White Knight in the fairy tale, he cumbereth himself with mousetraps, bee-hives and such useless impediments, and, in consequence, moves, when he moves at all, with broken and halting steps.

that taken by a blundering photographer; it is little else than a mere blot, having neither features nor expression. "There is nothing," says a philosophic writer, "that is more characteristic of the higher intellect as contrasted with the lower than its greater power of discriminating, *i. e.*, of seeing points of difference. It is differentiation that is always the law of progress. Knowledge begins as a vague blur, which gradually becomes distinct. Everywhere the specialist's eye sees finer shades of difference than are visible to the public, as the shepherd knows his sheep. It is incapacity for seeing difference that lies at the root of all crude, ill-considered generalization, and therefore at the root of the mental 'narrowness' (as it is usually called) which is ever ready to accept a principle unduly simple and wide in its asserted sweep, and therefore unduly rigid in its actual application."[1] Mr. Bain thus expresses the same general thought: "Our knowledge of a fact is the discrimination of it from differing facts, and the agreement or identification of it with agreeing facts."[2] It is, in truth, impossible to secure a clear and distinct idea of a physical thing, unless by a process of discrimination we separate it from things that resemble it; thus, it is very difficult to obtain an accurate mental image of a face seen in a great crowd, and it can only be done by carefully discriminating the difference between the face sought to be impressed upon the mind and the other faces in the throng. It is much more difficult to separate resembling principles than to separate resembling physical things, for in the case of physical things we have assistance from the organs of sensation, but in the case of abstract principles it is purely mental work. One who looks into the table of cases in any of our digests will be struck with the number of "cases distinguished." In many instances the cases supply examples of keen discrimination and close analysis, although it must be owned that in many other instances the attempt to "distinguish" is a mere pretext to avoid overruling in direct terms a decision which is felt to be erroneous, but which a mistaken

[1] Fallacies, Alfred Sidgwick, 256. [2] Logic, 4.

notion of consistency deters the court from boldly overthrowing.

§ 75. **Contention is usually as to applicability of general rule.**—The contention falls more frequently upon the question whether the general rule invoked applies to the particular case than upon the question as to the existence of the rule itself.[1] Few expressions are more often heard in the court-room than, "I admit the law, but deny its applicability to the case in hand." There is, as we have already said, much less difficulty in acquiring a knowledge of general rules than in giving them just practical application.[2] No matter how well stored the advocate's mind may be with principles, he will not attain great eminence nor win success unless he can discriminate differences and agreements, and accurately decide whether the particular case falls within the general principle upon which he plants his case, or within that invoked against him. The law of contracts, for instance, is quite well settled and understood, yet there is constant strife as to the practical application to be made of that law. So, too, the general principles of the law of wills are settled, yet controversies concerning their application are endless. An advocate is not well equipped who knows general rules but has not been trained to apply them. One may have the bow of Ulysses, but it will not be a formidable weapon unless he can bend it. New cases constantly arise which no settled rule of law will precisely fit. One who should expect a single rule of law to fit all cases of the same general nature would be as unwise as a tailor who should attempt to make all suits cut in a particular pattern fit all men of a particular race or class. The reason why new cases arise is cleverly given by DeQuincey in his essay on Casuistry. It is true, as he says, "that new cases are forever arising to raise new doubts whether they do or do not fall under the rule of law."

[1] See, for instance, Irvine *v.* Leyh, 102 Mo. 200, 209; Dunlap *v.* Steere, (Cal.) 16 L. R. A. 361, 363; Frank *v.* Traylor, (Ind.) 16 L. R. A. 115, 119; City of Noblesville *v.* Lake Erie and Western R. R. Co., 130 Ind. 1, 4, 5; Anderson *v.* Anderson, 129 Ind. 573, S. C. 28 Am. St. Rep. 211, 212.

[2] Mills' Logic, 208.

§ 76. **Law periodicals—Leading articles.**—Writers of leading articles in the law periodicals are, for the time, at least, and in a limited sense, specialists discussing particular subjects with a well defined object in view. If they do their duty well, they will discuss the particular topic better than an author of even more ability writing upon a general subject. Their mental power is concentrated, and they see more clearly the lights and shades, the agreements and the differences, than one who takes a broad view of even one branch of jurisprudence. For this reason a greater benefit from the study of these articles may be derived than can usually be gained from the study of the text-books. What has been said can not, of course, apply in its full force to articles which string together upon a slight thread of thought the conclusions of text-writers and judges; but, even from leading articles of this class, assistance may often be obtained. The criticisms of cases found in our law periodicals, although not always just, are sources from which valuable knowledge may be acquired. When, as often happens, an error is pointed out, it is done so clearly and so strongly that the converse of the rule adopted by the judge is so distinctly perceived that there is little room for mistake. On the other hand, when it happens, as very often it does, that the critic is wrong, the right appears in all the stronger light, so that no great mental vigor is required to attain the true knowledge. But not alone for these reasons should the advocate look to the magazines, for he will often find in them suggestions that will lead to a train of thought which will clear away doubt and perplexity, and light up more than one dark corner. We are not now, it may not be amiss to remark, referring to the mere reading of the magazines as they come from the press, for that, we suppose, will be done for the purpose of keeping in line with the current legal literature and decisions, but we are speaking of occasions when the advocate, with his mind aroused to actual work, is searching for the law of his case. More lawyers than one, veterans in experience and masters in rank, have received valuable assistance from the law journals.

§ 77. **Statutory law.**—Where the rule of law which governs the case is found in the statute, then, of course, reference must be made to the statute; but even when the rule is a statutory one, the advocate's duty is not done by a mere reading of the statute. The work of construing a statute is often a very difficult and perplexing one, for, in statutes, as elsewhere, words are often uncertain, and their meaning difficult to decipher. Bacon's saying, that, "Though we think we govern our words, yet certain it is that words, as a Tartar's bow, do shoot back upon the understanding, and do mightily entangle and pervert the judgment," is true. It was a saying of Daniel O'Connell that "he could drive a coach and six through almost any act of Parliament." Judge Story framed a statute with great care, spending six months upon its phraseology, and yet, when called upon, within less than a year, to interpret it, he was, after hearing two able lawyers argue the question, unable to give it a construction entirely satisfactory even to himself.

§ 78. **Construction of statutes.**—The maxim that "He who considers merely the letter of an instrument goes but skin deep into its meaning," applies quite as forcibly to statutes as to deeds, contracts, or the like. Many things are to be taken into consideration—the purpose for which the statute was enacted, the evil it was intended to remedy, the condition of the law at the time, the common law upon the subject, and other matters of a similar nature. Nor is a statute to be considered as an independent rule of law, but it is to be taken as part of one great system, and into that system it must be placed with as little jarring and dislocation of parts as possible.[1] The Roman lawyer wisely said: "To know the law is not to understand its words, but to understand its import and purpose."[2] Hobbes says, that "All laws, written and unwritten, have need

[1] Bishop Written Laws, § 242*b*; Humphries *v.* Davis, 100 Ind. 274.

[2] Another thinker says of those who content themselves with superficial knowledge for mere use that they act "as the unlettered use written words, or as cattle use appearances, for the use is one thing and understanding another."

of interpretation," and he acutely marks the difficulties of correctly interpreting written laws.[1]

§ 79. **Making law of the case available.**—To be available the law of the case should be condensed into compact mental judgments, and in that form woven into the mind, and not simply stored up in memory. Principles constitute the law; and, as Mr. Bishop strongly says, "The real distinction between a great lawyer and a small one is that the great lawyer looks beyond the cases as they appear on the surface of the reports to the law of the cases; looks, in other words, beyond the cases into the law precisely as, in the mechanic arts, the great operator looks beyond the mere motions which he sees going on in the machinery into those mechanical laws by which the motions are controlled, and thus understands how to do the new things which the demands of his calling present to his attention."[2] But we are not now so much concerned with what constitutes the law as with the method of preparing it for use in the actual contest. Pressing Mr. Bishop's illustration into further use, we add that the master mechanic binds into principles the mechanical laws, and is thus enabled to remember and use them when occasion requires.

§ 80. **Referring to general principles.**—The advice which the attorney-general gave to Mr. Aubrey is sound and judicious: "Always have an eye to principles." Warren represents his attorney-general as saying: "Referring everything to it, resolve thoroughly to understand the smallest details; and it will be a wonderful assistance in fixing them for practical use in your mind to learn as much as you can of the reasons and policy in which they originated."[3] Rufus Choate was careful to search for principles, for we find him saying of his own method of study: "My first business is obviously to apprehend the exact point of each new case which I study—to

[1] Leviathan, Pt. 2, Chapter. xxvi.

[2] 1 Criminal Procedure (1 ed.), § 1028.

[3] "No lawyer is worthy of the name who does not do his best to find a principle to guide him in every case." London Law Times.

apprehend and to enunciate it precisely—neither too largely nor too narrowly—accurately, justly. This necessarily and perpetually exercises and trains the mind, and prevents inertness, dullness of edge. This done, I arrange the new truth, or old truth, or whatever it be, in a system of legal arrangement, for which purpose I abide by Blackstone, to which I turn daily, and which I seek more and more indelibly to impress on my memory. Then I advance to the question of the law of the new decision—its conformity with standards of legal truth, with the statute it interprets, the cases on which it reposes, the principles by which it was defended by the court—the law—the question of whether the case is law or not. This leads to a history of the point, a review of the adjudications, a comparison of the judgment and argument with the criteria of legal truth."[1]

§ 81. **Mind must act quickly.**—Dimly outlined conceptions scattered through the mind in confusion will be of little service, if, indeed, of any service at all, on the trial. The virtues of thought in deliberate investigation are, doubtless, as Sir William Hamilton says, "clear thinking, distinct thinking, and connected thinking;"[2] but, in the heat of the contest, where the movements must be made quickly and unfalteringly, two other things are requisite—prompt thinking and decisive thinking. The principles of law must flash into the mind with lightning-like rapidity, and the application be made without an instant's hesitation. There is no time to turn the matter over in the mind, for the attention must not wander from the witness. It is a far cry from the quiet of the study to the tur-

[1] Brown's Life of Choate, 120. The sentence last quoted is full of meaning. The mere case lawyer cares nothing for the history of a principle, and text-writers often speak only of the value of modern decisions, forgetting that decisions are only evidence of principles. "The ink of science is more precious than the blood of martyrs," and that ink runs in an unruffled current through the channels of centuries. The masters of the law in former times studied such works as "Coke upon Littleton," and acquired a knowledge of principles by going to the fountain head. Truly, "there were giants in those days."

[2] Logic, 47.

moil of the trial.[1] Knowledge that will do well in the one place will do ill in the other. It was said of old: "Your knowledge of many things does not give you reason or wisdom."[2]

§ 82. **Practical use of knowledge.**—This, certainly, is true of the advocate: He must have knowledge, and be able to make practical use of it on the spur of the occasion. It is said of General Grant that he carefully studied a map of the country over which his army was to move and his battles to be fought, but that he studied it once only, and looked at it never again, for the first study fixed it in his mind. It is this faculty of imbedding matters in the mind, ready for instant use, that makes great soldiers and great advocates. This is best done by getting the things into the mind in orderly array. Locke says of the mind: "To shorten its way to knowledge and make each perception more comprehensible it binds them into bundles." The process which the great author describes is the only one that will certainly secure knowledge that can be effectively used when occasion demands. Binding the propositions of law into bundles accomplishes a double purpose—that of making them thoroughly known, and that of laying them up where they can be made available without effort. These mental bundles should contain no rubbish, but should be composed of principles wrought out by previous thought, and freed from unsound or hurtful doctrines. These propositions should be not merely things remembered, but things known. This is the knowledge that gives real power, and makes the advocate strong when in the thick of the fight he most needs strength.[3] It is of this

[1] As Montaigne says: "The pleader's business compels him to enter the lists upon all occasions, and the objections and replies of his adverse party often jostle him out of his course and put him upon the instant to pump for new and extempore answers and defences."

[2] Heraclitus, the Ephesian.

"James," said the father of the gifted James T. Brady to his son, "make your learning practical, for a bookworm is a mere driveler—a gossamer."

[3] "Dr. Chalmers used to say that in the dynamics of human affairs two things are essential to greatness—power and promptitude." Dr. Brown's "Spare Hours."

that comes that firm resolution which will enable the advocate to do his work with something of Luther's spirit when he said, "Here I take my stand."

§ 83. **Fixing legal principles in memory.**—"If," says Dugald Stewart, "we wish to fix the particulars of our knowledge in our memory, the most effective way of doing it is to refer them to general principles."[1] This doctrine may be extended to the acquisition of legal propositions for use on the trial of a cause, for, by laying down in the mind a general principle, or, if there are many different phases of the case, a series of general principles, and arranging the particular propositions under the principle governing the class to which they belong, a firm grasp is obtained of the law of the case. "Method may be called in general the art of disposing well of a series of many thoughts, either for the discovering of truth when we are ignorant of it, or for proving it to others."[2] The art of which Pascal speaks is the art which the advocate must attain if he would do his work effectually, for without it he can neither acquire nor transmit knowledge otherwise than lamely and imperfectly. The advice given long ago is as valuable now as ever: "Marshal thy notions into a handsome method. One will carry twice as much weight trussed and packed up in bundles than when it lies untoward, flapping and hanging about his shoulders." But it is not enough for the advocate to carry his weight without its "flapping and hanging about his shoulders," for he must carry it so that he can use each bundle effectively and without confusion when the time comes. A misplaced bundle may work almost as much injury as the misplaced leaf in the book of fate. "Method," says Mr. Lewis, "is a path of transit."[3] Whether this path be rugged or smooth, crooked or straight, will depend upon the art of the advocate.

[1] Stewart's Elements of Phil., Chap. vi, § 12. Warren's Law Studies, 334.

[2] Port Royal Logic, 308.

[3] History of Philosophy, 718. "Books," said Bacon, "can never teach the use of books." Another thinker says: "Every practical man, whether he be merchant, mechanic, farmer or lawyer, transmutes his experience with intelligence until his will operates with the celerity of instinct." One who can not use his

§ 84. **The knowledge needed by the advocate.**—"There is no science," says John Stuart Mill, "which will enable a man to bethink him of what will suit his purpose."[1] To no profession does this more forcibly apply than to that of the advocate. He must "bethink him" of what will suit his purpose, and when he has bethought himself of this he must "bethink him" how it should be applied. He must know what he needs, where to find it, and how to use it when he does find it. Knowledge of the kind attributed to the clergymen by Mr. Tulliver, when he said, "My notion o' the parsons was as they'd got a sort of learning as lay mostly out o' sight," will do the advocate very little good. The learning which that hard-headed Englishman wanted his son to have is much more like that which the advocate needs; for a knowledge "that will enable him to see into things quick, and know what things mean, and how to wrap things up in words,"[2] is of practical value to one whose contests are in the open day, about real things, and against hostile forces. Knowledge not simply for the sake of knowledge but for actual practical use is the knowledge that equips the advocate for his work. "Professional skill," says Philip Gilbert Hammerton, "is knowledge perfected by practical application, and, therefore, has a great intellectual value. Professional life is to private individuals what active warfare is to a military state. It brings to light every deficiency and reveals our truest needs."[3] Professional skill involves more than the knowledge of books and cases, for it requires that knowledge with the added requisite of power to use it effectively.[4] With much of truth, yet not without something of error, the author we have quoted says: "I may observe that, to be truly professional it ought to be always at command, and, therefore, that

learning is in much the same situation that Artemus Ward was in when he said: "I have the gift of oratory, but I haven't got it with me."

[1] Logic, 208.

[2] Mill on the Floss, 23. "All the learning in the world," says Roger North, "will not set a man up in the bar practice without a faculty of a ready utterance of it."

[3] Intellectual Life, 408–411.

[4] "The acquisition of intellectual power," it has been said, "is of more importance than the acquisition of knowledge."

the average power of the man's intellect, not his rare flashes of highest intellectual illumination, ought to suffice for it. Professional work ought always to be plain business; work requiring knowledge and skill, but not any effort of genius."[1]

§ 85. **Business work.**—The work of preparation, whether done in gathering the facts or in securing the law, is plain business work; but, for all that, it requires professional skill of a high order.[2] He who knows how to do that work knows a great deal. "It is a great mistake," says Judge Baldwin, "to suppose that a lawyer's strength lies chiefly in his tongue; it is in the preparation of his case, in knowing what makes the case, in stating the case accurately in the papers, and getting out and getting up the proofs. It requires a good lawyer to make a fine argument, but he is a better lawyer who saves the necessity of a fine argument, and prevents the possibility of his adversary's making one."[3]

§ 86. **Written notes.**—Written notes are well enough if not made the sole repository of the law. There is a better place for the law of the case than in written memorandums, and that place is the mind of the lawyer. Reliance on what is written will diminish real power. Authorities, however, may profitably be noted at the time the investigation is made, but the principles, and the method of applying them, are to be taken up and retained in the mind. Points may without harm be put in writing; but if too much is committed to writing, too much dependence will be placed upon it, and the mind will not work with the requisite energy and power. Compact, terse, concise propositions, full enough to arouse the required train of thought, and enable the mind to reproduce its judgments, are enough; more than this will, in most cases, do harm. Notes made when the mind is warmed to its work are freshest and

[1] Intellectual Life, 408–411.

[2] It is said of Ezekiel Webster that "he did not need to speak much, for he generally put his cases into such a shape that he got them without coming on to trial." Letter of N. P. Rogers, quoted in Harvey's "Reminiscences of Webster," 49.

[3] Flush Times in Alabama, 245.

strongest. Promptness will give them efficacy; delay will diminish it. The method, if clear at the first will be clear throughout. A confused method at the outset will perplex its framer until the end. Notes methodically made and orderly arranged will be valuable, but notes huddled together in disorder and confusion will be worse than valueless. A method settled at the start and adhered to throughout will give a clear, strong, distinct, and connected thought. The prudent and skillful worker will lay down his road in the beginning, survey his line, and proceed along it in an orderly way; but the careless and clumsy worker will begin badly and slovenly, and the further he goes the greater will be his perplexity and bewilderment.

CHAPTER III.

THE THEORY OF THE CASE.

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§ 87. **Definite theory must be adopted.**—"First of all," says Quintilian, "let our method of speaking be settled, for no journey can be attempted before we know to what place and by what road we have to go;" and so it may be said of preparing a cause for trial after the materials have been secured, first of all let the method of conducting the cause be settled, for, adopting and somewhat expanding Quintilian's illustration, the road through the courts will be a rough one, leading, most likely, to misfortune and defeat, unless a method of conducting the case be settled and fixed in the mind.[1] The first step can not be safely taken in a case without a settled and certain theory. A case must be put to trial upon a definite theory; that theory the pleadings must outline, the evidence sustain, and the law support. Not only is it necessary to frame a theory to secure a knowledge of the case, but it is indispensably necessary that it should be contained in the pleadings, for the courts will not permit an advocate to wander aimlessly about, but will keep him within the lines fixed by his theory. "It is essential to the formation of the issues, and to the intelligent and just trial of causes, that a complaint should proceed upon a distinct and definite theory."[2] It is, therefore, not possible to put a case in proper condition for trial without having constructed a clear and definite theory of the case, giving due regard and appropriate place to the elements of law and fact. This principle is recognized in the elementary rules of practice, and notably so in the familiar rule of evidence that the party must recover

[1] "The real order of experience begins by setting up a light and then shows the road by it, commencing with a regulated and digested, not a misplaced and vague course." Bacon.

[2] Chicago, etc., Co. *v.* Bills, 104 Ind. 13 (16); Markover *v.* Krauss (Ind.), 17 L. R. A. 806; Illinois, etc., Co. *v.* Slatton, 54 Ill. 133; Michigan, etc., Co. *v.* McDonough, 21 Mich. 165, S. C. 4 Am. Rep. 466; Lake Shore, etc., Co. *v.* Perkins, 25 Mich. 329.

secundum allegata et probata,[1] and that the evidence must correspond with the allegations, and be confined to the point in issue.

§ 88. **Cases lost because of a wrong theory.**—The courts have, in express and decisive terms, declared that a cause must proceed upon a definite theory, and have often denied a recovery because a wrong theory was adopted. Thus, in a reported case,[2] the plaintiff's cause was lost because the theory adopted was that the plaintiff might recover at law for money loaned, while the true theory was that the claim was one that might be enforced in equity. In another case[3] the theory of the plaintiff was that he had a right to maintain an action for the recovery of specific money, but he met defeat because his theory was unsound, although upon a sound theory he would have succeeded. The general rule has been thus stated: "It is an established rule of pleading that a complaint must proceed on some definite theory, and on that theory the plaintiff must succeed or not succeed at all. A complaint can not be made so elastic as to take form with the varying views of counsel."[4] A theory of the law of the case radically unsound can not secure a right result; however strong the facts may be, a wrong theory of the law will bring ultimate defeat.

§ 89. **Cases gained on a sound theory.**—The same case may be gained on a sound theory that would be lost on a bad one.

[1] Rome Exchange Bank *v.* Eames, 1 Keyes (N. Y.), 588; Morgan *v.* Gaar, Scott & Co., 64 Ind. 213; The Johnston Harvester Co. *v.* Bartley, 81 Ind. 406; Thomas *v.* Dale, 86 Ind. 435; Mescall *v.* Tully, 91 Ind. 96; Cottrell *v.* Ætna Ins. Co., 97 Ind. 311; City of Logansport *v.* Uhl, 99 Ind. 531; Cleveland, etc., Ry. Co. *v.* Wynant, 100 Ind. 160; Bremmerman *v.* Jennings, 101 Ind. 253; Hannon *v.* Hilliard, 101 Ind. 310; Snow *v.* Indiana, B. & W. Ry. Co., 109 Ind. 422, S. C. 9 N. E. Rep. 702; John G. Lockwood *v.* John Quackenbush *et al.*, 83 N. Y. 607; Harris *v.* Hannibal & St. J. R. Co., 37 Mo. 307; Springfield City R. Co. *v.* De Camp, 11 Brad. (Ill.) 475; Waldheir *v.* Hannibal & St. J. R. Co., 71 Mo. 514.

[2] Kniel *v.* Egleston, 22 Cent. L. J. 133.

[3] Sager *v.* Blain, 44 N. Y. 445.

[4] Mescall *v.* Tully, 91 Ind. 96. See, also, Lockwood *v.* Quackenbush, 83 N. Y. 607; Judy *v.* Gilbert, 77 Ind. 96, S. C. 40 Am. Rep. 289; Moorman *v.* Wood, 117 Ind. 144 (147); Feder *v.* Field, 117 Ind. 386 (391).

One advocate may take the same facts and secure a verdict, while another will be unable to frame a theory that can be successfully maintained. Mr. Bishop supplies an illustration.[1] A case is given by him in which goods were brought into this country in violation of our revenue laws; they passed the custom-house officers under a permit genuine in form and signature, but procured by bribery. Counsel to whom the revenue officers first applied for advice searched the statutes, and, finding no provision applying to the particular case, advised that no prosecution could be maintained. Another counsel took up the case and secured a verdict. His theory was that the case was the ordinary one of smuggling, and so he put it to trial. When the permit was offered it went in evidence, but was assailed and overthrown on the ground of fraud. The mistake of the counsel first consulted was in framing the theory of the case. In another case counsel brought an action on a promise and succeeded, although the statute of limitations was pleaded; while, on the same facts, the first action brought for the recovery of damages for fraudulent representations was defeated by the plea of the statute of limitations. Here the result was entirely changed by the theory adopted. In still another case an action was brought on a promissory note. The defendant pleaded a discharge in bankruptcy; the plaintiff replied the general denial and failed, although if he had pleaded that the debt was a fiduciary one he would have succeeded, as many others did in cases where the facts were precisely the same in legal effect. In the one case the theory was wrong, in the others no mistake was made.

§ 90. **Other illustrative cases.**—Another class of cases supplies an illustration: A man fell into an excavation in a public street made by parties licensed by the municipal corporation. The theory adopted by counsel was that the corporation was liable for the negligence of its licensees; but the theory was unsound[2] and the plaintiff was defeated. The same facts

[1] First Book of the Law, §§ 124–125. [2] See Elliott on Roads and Streets, 334,468-469.

were laid before other counsel; they constructed a theory that the corporation was liable because it was chargeable with notice of the dangerous condition of the street,[1] and on this theory tried the case and secured a verdict. But it is not necessary to multiply examples, for enough have been collected to serve our immediate purpose, which is to suggest to the advocate the importance of a sound theory of the law of the case.

§ 91. **Necessity of a theory.**—A mistake in devising a theory of the facts is not always fatal, but it does, in every instance, endanger the cause, and in some instances does lead to defeat. No case can be well tried upon a bad theory of the facts, and without a theory it can not be conducted as one deserving the name of advocate would care to conduct a case. Without a theory of the facts and the law, there can be neither system nor certainty in the progress of the case through the courts.[2] Some cases are so strong that no blunderer can ruin them, but such cases are very rare. It is only cases that try themselves by their own inherent strength that can be won without a theory of the facts as well as of the law, and in such cases no advocate is needed.

§ 92. **Contests of forum likened to battles.**—The contests of the forum are often likened to battles, and terms and suggestions are often borrowed from the art of war. Frequent use is made of such terms as the plan of "the campaign," the "line of action," or "line of defense." Rufus Choate said of the advocates who defended Professor Webster, "that they should settle on their certain line of defense."[3] The great advocate displayed, we may say in passing, a just conception of the true theory of the defense, and a keen perception of the weakness

[1] See Elliott on Roads and Streets, 461.

[2] "Facts may sometimes be explained by one view as well as another, but without a theory they are unintelligible and uncommunicable." Professor Grove. "Nor is it a slight benefit to know what is needed for the proof of a point, what is wanting in a theory, how a theory hangs together, and what will follow if it be admitted." Cardinal Newman.

[3] Nelson's Memoirs of Rufus Choate, 18.

in the one adopted. His judgment was that the theory of the defense should not have been that the remains found in the furnace in Webster's laboratory were not those of Dr. Parkman, but that the theory should have been so constructed as to require the government to show whether Parkman came to his death by visitation of God, or whether the killing was the result of a sudden quarrel, or was done in self-defense. Returning from this slight digression, we say that the terms borrowed from military science are not without relevance and force, but they are, while expressive and forcible, apt to mislead if the ideas they suggest are too closely followed in the work of preparing and putting a case to trial. The term "theory of the case" is generally used by the courts, and is, perhaps, as expressive and accurate as any general term can be.

§ 93. **Definition of theory of the case.**—A theory of the case is a comprehensive and orderly mental arrangement of principles and facts, conceived and constructed for the purpose of securing a judgment or a decree of a court in favor of a litigant.[1] The object sought is the judgment of the court, and the theory is the means to that end. A theory of a case is more than a provisional fiction, although it may contain many suppositions or conjectures; it is more than a plan, although it is a systematic compendium of details; it is more than a system of conjectures, although it contains many hypotheses. It is a mental creation, embodying the principles of action, the scheme of conduct, and the methods of procedure. It is more than a fiction, for it is a mental representation of a real case, conceived for an actual purpose, and such representations are not fictions, although they are intangible. It is different from a plan, because it not only marks out what is to be done but also accounts for many facts, and places a foundation beneath many princi-

[1] "A theory takes a multitude of facts, all disjointed, or, at most, suspected of some interdependency; these it takes and places under strict laws of relation to each other." DeQuincey. "In its most proper acceptation theory means the completed result of philosophical induction, and theory of some sort is the necessary result of knowing anything of a subject." John Stuart Mill.

ples. The framer of a theory does, in some degree at least, take upon himself the dual character of architect and philosopher. In so far as he devises and marks out a plan, his duties are those of an architect; while in so far as he accounts for facts, or supplies hypotheses for the support of principles, his duties are those of a philosopher.[1]

§ 94. **Different uses of the word "theory."**—The word "theory" is sometimes used as meaning a mere speculative scheme, either purely visionary, or framed without any view to practical use. It is in other cases used to denote a philosophical explanation of some physical phenomenon, as Wells' "Theory of Dew," or Tyndal's "Theory of Light." In other cases it is used as signifying an explanation of some moral or ethical subject, as Adam Smith's "Theory of Moral Sentiments," or "The Theory of Ethics." In still different cases it is used as meaning the exposition of the principles of a science, as the "Theory of Thought," "The Theory of Music;" and in other cases it is used to denote the philosophy of a branch of science, as "The Theory of the Common Law." It is evident that no one of these definitions, taken in itself, conveys an adequate meaning of the term when used as indicating the scheme, or plan, of an action at law or a suit in equity. A theory of a case contains all the elements of the various theories described in these definitions. It is, however, never a mere speculative scheme, although many of the principles of law which enter into its composition are the products of speculative thought. The speculation which produces, or discovers, these principles is guided by analogy, is directed to a certain end, and is undertaken for a real purpose. Many of these principles are obtained by inductive investigation; others are deduced from established maxims and axioms. By whatever method these principles are obtained, they require development and exposition. The facts are gathered by observation and from evidence, but their existence and effect are to be accounted for and

[1] "One great obstacle to progress and improvement has been the neglect of practice in speculative men, and the ignorance or contempt of theory in mere practical men." Dr. Rees.

extended by hypothesis and inference. The facts which we obtain from testimony or observation supply the basis for an inference which often leads to results far beyond the immediate influence or effect of the observed or proved fact itself, and conjecture is often necessary in order that the work of inferring shall take the proper direction. The proved facts, the inferential results springing from them, as well as the conjectures as to the manner and reality of their existence, will be ineffective, if not unintelligible, unless put into an orderly and systematic form. There is, therefore, in the theory of a case, a collection of many and different things resulting in the formation of a mental structure which has in it some of the qualities of a plan, many of the characteristics of a scheme, many of the features of a system; and when fully developed, this structure becomes an exposition of principles and facts.

§ 95. **Meaning of word "theory."**—The word "theory" is very frequently used as signifying the foundation of a rule of law. Thus it is said: "The theory of prescription rests upon the presumption of a past grant." Again, it is said that, "the theory of title by limitation is that the repose of society requires that long continued possession shall not be disturbed." A Missouri case supplies an illustration of the conflict of rival theories of law. It was said in that case: "The two leading theories are that, as to her separate estate, the wife is a *feme sole;* that she may contract debts, as though unmarried, for the payment of which her property is holden. Upon this theory it can not matter whether the debt be evidenced by a written instrument or not, if it is established to be her debt. The other theory is that the grant of a separate estate does not give the wife a credit based upon it."[1] Another case supplies an illustration of the use of the word as denoting the rule upon which decisions were based, the court saying: "These cases are based upon the theory that the responsibility of the appellant to the appellee was no greater than it would have been had

[1] Miller *v.* Brown, 47 Mo. 504.

the latter been a stranger instead of a passenger. This theory is incorrect."[1]

§ 96. **"Theory" means more than "hypothesis."**—The word "theory" is frequently used where "hypothesis" would more clearly and accurately express the idea intended to be conveyed. The terms are not synonymous; for theory means something of a more permanent and complete character than the thing denoted by the word "hypothesis." A lawyer who should say he had framed a theoretical question for an expert witness would not convey his real meaning; but if he should say he had framed an hypothetical question there would be no uncertainty as to the meaning intended to be conveyed. Where a supposition or conjecture is made for the purpose of explaining or accounting for a fact, an hypothesis is formed, and when this becomes settled by investigation and proof, a theory is constructed, which takes the place of the hypothesis. In general, however, theory means something more than the explanation of an isolated fact.[2] Suppose the case to be that of a man accused of murder, and that blood-stains are found upon his garments; the hypothesis of the prosecution would be that the stains were caused by the blood of the murdered man; and this would form one of the criminative circumstances adduced against the accused. The counsel for the prisoner would reject this hypothesis, and endeavor to frame another and, if possible, more probable one. His first work would be that of conjecture, his next that of investigation. If, in the course of his investigation, he should discover something likely to pro-

[1] Sherley *v.* Billings, 8 Bush. (Ky.) 147, S. C. 8 Am. Rep. 451.

[2] Dr. Wharton says: "The facts are meaningless unless they fit to an hypothesis." Mazzini says: "The historian must necessarily have some theory of arrangement, perspective and expression from which, logically, he will be guided to a theory of causes. The cause of every fact is an essential part of that fact and determines its ruling characteristics." At another place he says: "How then can a fact be rightly viewed and narrated otherwise than from an eminence dominating alike the cause, the fact and the aim." The advocate must know the fact, he must give it proper position, attribute its existence to the actual cause, and assign to it due influence upon the object he aims to accomplish.

duce the stains, as, for instance, that his client had been slaughtering an ox, he would adopt the hypothesis that the stains were caused by the blood of that animal. The hypothesis would only account for one of many of the facts of the case, and it is evident that in such a case as that supposed, as, indeed, in almost all real cases, there would be many other facts to be explained or accounted for. There are, therefore, in every complicated case many hypotheses, and these are to be gathered up and arranged in an orderly and systematic scheme.

§ 97. **Difference between theory and hypothesis.** — De-Quincey has acutely marked the difference between a theory and an hypothesis, saying: "A theory, therefore, may be defined: an organic development to the understanding of the relations between the parts of any systematic whole. But in a hypothesis it is only one relation which is investigated, viz; that of dependency. A number of phenomena are given, and perhaps with no want of orderly relation amongst them, but as yet they exist without apparent basis or support. The question, therefore, is concerning a sufficient ground or cause to account for them. I, therefore, step in and underlay the phenomena with a sub-structure, or sub-position, such as I think capable of supporting them. This is a hypothesis. Briefly, then, in a theory I organize what is certain enough already, but undetermined in its relations; whereas, in a hypothesis I assign the causality where it was previously unknown." He concludes his discussion by affirming that "Theory is ordination; hypothesis is subtraction."[1]

§ 98. **Hypotheses—Deduction.**—It is no doubt an important part of the theory of a case to organize into a systematic compendium the principles of law and matters of fact known to the advocate, but it is not less important that the hypotheses

[1] De Quincey's Writings, Vol. IX, Houghton, Mifflin & Co. ed. 604. He further says: "That is properly an hypothesis where the question is about a cause, certain phenomena are known and given, the object is to place below these phenomena a basis capable of supporting them and accounting for them."

which, in every complicated case, are necessary to account for the conclusions of fact essential to success, should have placed under them a "sub-structure" of minor facts that will make them appear to be true. These conclusions of fact, which are the points that in a great measure control cases, must be so underlaid that their probability will be so strong as to carry conviction. The advocate must, as De Quincey says, "step in" and underlay these conclusions, which are in reality hypotheses, with such a sub-structure as will give them support. The advocate must, in almost every case, advance beyond the facts directly established by the evidence. He must deduce conclusions from the facts directly proved, and this is done by framing hypotheses. They are bridges which carry him across gaps and chasms which would otherwise be impassable. It is said by Uberweg that "The formation of hypotheses is a means to scientific investigation as justifiable as indispensable,"[1] and that this is true is proved by the course pursued by those who have made great discoveries in the physical sciences, as well as by the practice of those who have been great trial lawyers.

§ 99. **Great lawyers skillful in constructing hypotheses.**— Choate's success was owing quite as much to his acuteness in constructing hypotheses as to his eloquence. Scarlett, "the great verdict-getter," was not an orator, but he was a scientific framer of hypotheses. It will be evident to one who carefully studies the jury arguments of Erskine that much of his success was owing to the dexterity with which he framed his hypotheses, although his wonderful power as a speaker added greatly to his success. Take, for instance, his grand defense of Hadfield, and it will be found that, eloquent as his speech was, it was the dexterity with which he framed his hypotheses, quite as much as his arguments, that induced Lord Kenyon to inform the attorney-general, upon the conclusion of the prisoner's evidence, that "the case should not be proceeded in." Webster's conduct of the prosecution and defense of causes exhibits the same great skill in constructing hypotheses, and

[1] Logic, 506.

of this his speeches in the prosecution of John F. Knapp, and in defense of the Kennistons for the robbery of Major Goodridge, supply ample proof. Perhaps no hypothesis was ever more clearly conceived by any advocate, or more vividly placed before a jury, than that of Webster as to the manner in which the murder of Joseph White was committed.

§ 100. **Hypotheses must be probable.**—The study of the speeches of great advocates becomes much more interesting and far more profitable if the reader searches for and grasps the hypotheses which the speaker has framed before entering upon his work; for, to borrow something of Southey's thought and language, "as the beams to a house, as the bones to the microcosm of man," so are the hypotheses to the speech of the advocate. It is said by a German thinker that: "The intelligent man is not he who avoids hypotheses, but he who asserts the most probable, and best knows how to estimate their degree of probability. What is called certainty in a law case is at bottom only the probability of the hypothesis which refuses to admit the possibility of error in the mind of the judge."[1] It is certainly true that the intelligent lawyer is not the one who avoids hypotheses, for he knows that upon them chiefly rests his hope of success in all intricate cases. Their force depends in a great degree upon their probability. Jurors will give little heed to improbable hypotheses; but it is not always the bold hypothesis that is improbable. The circumstances may be such as make a bold hypothesis the most probable that can be framed. "But to the most ingenious boldness in the invention of hypotheses there must be united the most cautious accuracy in testing them. Scientific hypotheses are not assertions which have been floating in the air and are laid hold of; they are the result of regular reflection on experiences." The test must be that of probability and the guide that of experience. Only such hypotheses as are rational, conform to experience, and are supported by probability, will stand the rough usage they will receive in the forum.

[1] Uberweg Logic, 507.

§ 101. **Fanciful hypotheses.**—Strange or unnatural hypotheses are expedient only in extraordinary cases.[1] In the cases which ordinarily arise strange or fanciful hypotheses are never to be framed, for an ordinary case thus decked out would look so improbable that success would be impossible. But whatever the demands of the case, the cardinal rule is to frame such hypotheses as shall appear probable. Edgar A. Poe was very dexterous in framing marvelous hypotheses and giving them an air of probability; nor was he less skillful in detecting an unsound hypothesis than in constructing natural ones, and a study of some of his productions is, for this reason, if for no other, instructive and profitable.[2] But, whether the hypothesis be a strange one or an ordinary one, it must not be improbable. As Uberweg says, "The hypothesis is the more improbable in proportion as it must be propped up by artificial auxiliary hypotheses. It gains in probability by simplicity and harmony, or identity with other probable or certain suppositions."[3]

§ 102. **Definition of hypothesis—Common use.**—Hypothesis precedes theory. "An hypothesis," according to Mill, "is any explanation which we make, either without evidence, or on evidence avowedly insufficient, in order to deduce from it facts which are known to be real." According to Uberweg: "Hypothesis is the preliminary admission of an uncertain

[1] That there are cases in which they are expedient is proved by the effect of the theory advanced by Rufus Choate in Furst's Case. Brown's Life of Choate, 179. Strange and unnatural things are sometimes done by men, and occurrences described by writers of fiction and criticised as improbable have often been duplicated in actual life. The bursting of the dam in Charles Reade's "Put Yourself in His Place," which was at one time supposed to be impossible, has since been shown to be probable by a similar occurrence in Massachusetts and by the Johnstown disaster. There is much truth in what Mr. Besant represents his solicitor as saying: "Everything is possible. Let us not argue possibilities. We have certain facts before us; by the help of these I shall hope to find out others."

[2] The Murder in the Rue Morgue is a striking illustration of Poe's skill in making a strange theory seem probable, and the Mystery of Marie Roget is a remarkable exhibition of his skill in constructing a natural hypothesis.

[3] Uberweg Logic, 506.

premise, which states what is held to be a cause in order to test it by its consequences." Men in every day life form hypotheses, and often in regard to common occurrences. A wagon is overturned or a mill stopped, and the first mental act of one interested is to form some conjecture as to the cause of the accident. In commercial life the most successful men are those who are most sagacious in forming hypotheses. Here, as elsewhere, probabilities are to be measured, and the results to be accepted as not only accounting for what is past, but as, in some degree, predicting what will happen in the future. It is, therefore, a mistake to suppose that only philosophers and lawyers make use of hypotheses. It may, indeed, be doubted whether there is any calling in life in which use is not made of hypotheses. Mr. Mill has depicted the process which men habitually pursue, oftentimes without being conscious of their own mental operations. "Let any one watch the manner in which he himself unravels the complicated mass of evidence; let him observe how, for instance, he elicits the true history of any occurrence from the involved statements of one, or of many, witnesses; he will find that he does not take all of the items into his mind and attempt to weave them together; he extemporizes from a few of the particulars a first rude theory of the mode in which the facts took place, and then looks at the other statements one by one, to try whether they can be reconciled with that provisional theory, or what alterations or additions it requires to make it square with the facts."

§ 103. **Examples of hypotheses.**—What Quintilian calls a conjecture is very much the same thing as that which is now usually denominated an hypothesis. John Locke's *guess* is a crude hypothesis; as is evident from such passages as: "This appearance of theirs in train, though perhaps it may be sometimes faster and sometimes slower, yet, I *guess*, varies not much more in a waking man." The truth is, that all guesses and conjectures are crude hypotheses, and men are engaged in forming them who are ignorant of the mental operation. They are formed to account for things happening every day. The

carter's wheel flies off the axle of his cart, and his hypothesis is that the linch-pin has fallen out. The gardener's seeds are dug up and he sees the tracks of chickens, and his hypothesis is that the mischief was done by them.

§ 104. **Value of hypotheses.**—The faculty of promptly and accurately framing an hypothesis that will account for an occurrence is one of great value, no matter in what pursuit its possessor is engaged, but to the philosopher, the physician and the lawyer it is indispensable. No learning, however great; no study, however assiduous, will supply its place. This faculty can be strengthened and improved by exercise. For proof of this, if proof be needed, we need only instance the readiness and accuracy with which the experienced physician frames an hypothesis, accounting for the presence of the symptoms which he observes in his patient, or the promptness and certainty with which the thinking mechanic accounts for a defect in a complicated machine. It is not too much to say that no calling of life requires, as a condition of success, a higher development of this faculty than does the profession of the advocate. It is impossible to conceive clearly the principles of law governing a case without an hypothesis, and it is not less difficult to understand the facts and comprehend their relation and effect without one.

§ 105. **Hypotheses are necessary in communicating facts and ideas.**—Hypothesis is not only essential to the acquisition of adequate ideas by the thinker himself, but it is also essential to an intelligent communication of them to others.[1] Professor

[1] The eloquent Mazzini in his review of Carlyle's French Revolution in defending what he calls the "School of Progressive Movement" says: "In other countries it has been charged with being the School of Hypothesis. If they who bring this charge were to remember that all the greatest discoveries of the human intellect in the various sciences have originated in hypotheses, afterward verified by study, how this hypothesis of the life and progress of humanity may be traced up to Dante, and illumines the page of Bacon and how fruitful it already is of life and movement amongst all the populations of Europe to-day, they might perhaps be less hearty in condemnation." The influence and power of well framed hypotheses is

Grove says: "Let us use our utmost effort to communicate a fact without using the language of theory and we fail. Theory is involved in all our expressions; the knowledge of by-gone times is imparted into succeeding times by theoretic conceptions. As the succeeding knowledge of any particular science develops itself to our view it becomes more simple, hypotheses, or the introduction of supposititious views, are more and more dispensed with, words become more directly applicable to the phenomena, and, losing the hypothetic meaning which they necessarily possessed at their inception, acquire a secondary sense, which brings more immediately to our minds the facts of which they are indices. The hypothesis fades away, and a theory, more independent of supposition, but still full of gaps, takes its place."

§ 106. **Use of imagination in forming theory.**—In the process of forming a theory we exercise, not only the understanding, but also the imagination. It is impossible for an observing or reflecting man to pass one day in the ordinary business of life without having made some use of the representative faculty. Imagination is commonly supposed to be opposed to the useful and practical; but this, like many other theories, is, as it is easy to prove, altogether erroneous. We do use the imagination in the most matter of fact affairs in life, and in the driest and most abstruse sciences.[1] Sir William Hamilton declares that it is essential to the successful cultivation of every scientific pursuit, and that "it may well be doubted whether Aristotle did not possess as powerful an imagination as Homer."[2] Sir Benjamin Brodie says that when controlled by experience "it becomes the noblest attribute of man, the source

felt in such great works as Freeman's Comparative Politics, and Taylor's Origin and Growth of the English Constitution, as well as in the inventions and discoveries in the science of physics and in the mechanical arts.

[1] We are not unmindful that the popular view of the lawyers, the "sons of Zeruiah," as Cromwell's Puritans called them, is, that they are gifted with imaginations entirely too fertile; but we beg leave to explain that the imagination which we commend is the scientific imagination, which seeks images of truth, and not their counterfeit presentment.

[2] Lectures on Logic, 426.

of poetic genius and the instrument of discovery in science." Prof. Tyndal, in his lecture on the "Scientific Use of the Imagination," [1] affirms that it is one of the most important of all the faculties in the investigation of scientific truths, and beautifully says: "In the dim twilight of conjecture the searcher welcomes every gleam, and seeks to augment his light by indirect incidences." Professor Washburne, in speaking of the imagination, says, that by it the lawyer "is often able to guess out and anticipate what he has to meet in his adversary's case, and thus forestall the effect of what he is to bring against him by being prepared to counteract it."[2] We think that Professor Washburne limits the use and office of the imagination entirely too much. It is, it seems to us, as essential in framing hypotheses to support the advocate's own case as it is in ascertaining what his adversary will likely bring against him. It supplies the means of advancing from the direct evidence to the ultimate facts; it supplies the light which discloses the road that leads to a successful termination of the investigation. But for this faculty progress would sometimes be impossible. An investigation pursued in darkness can only result in obscurity and doubt. If the investigator can vividly imagine the object he seeks to reach, and the road to it, he is much more likely to reach it than if he stumbles on without any definite end in view. "Be our business in life however prosaic," says Bulwer, "we shall not attain any eminent success if we despise the clairvoyance which imagination alone bestows. No man can think justly but what he is compelled to imagine; that is, his thoughts must come before him in images. Every thought not distinctly imaged is imperfect and abortive." [3]

§ 107. **Imagination aids in forming hypotheses.**—Quintilian says that, "In regard, then, to everything that is done, the question is either why, or when, or in what manner, or by what means it was done," and these questions are not always an-

[1] Fragments of Science, 127.

[2] Lectures on the Study and Practice of Law, 10.

[3] Caxtonia, 49.

swered by the information which the advocate secures at the commencement of his work. Where there is evidence bearing upon all of these questions the answers are there found, but it is seldom that the direct evidence furnishes answers to all the material questions that arise in the cause—sometimes indeed, not to any of them—so that the only course open to the investigator is that of conjecture, and in that process imagination is a most potent instrument. It advances answers which, if not always correct, at least open and light the way to an intelligent investigation. It may be that the understanding will reject the answers at first suggested by the imagination, but, if so, repeated attempts will be made until some answer is suggested that will receive a favorable judgment. If it were not for the materials presented to the mind by the imagination there would, in many cases, be nothing upon which the understanding could work. The imagination presents, it may be, various hypotheses or conjectures; these the mind tests, rejecting those it judges untenable, and accepting those it judges reasonable. If it were not for these conjectures no real progress toward explaining or accounting for a transaction involved in obscurity or mystery could be made. The really great advocates employ the imagination quite as much in the work of securing materials for the construction of probable hypotheses as in embellishing their addresses. This is true of the most brilliant and eloquent of the great trial lawyers, and the study of their addresses is much more valuable when directed to a discovery of their use of the imagination in constructing hypotheses than when directed merely to their graces of diction.

§ 108. **Effective work of advocates in constructing hypotheses.**—The most effective work done by the advocate is in constructing hypotheses that will lead to a favorable decision, for it is true that in by far the greater number of cases it is not the beauty of diction nor the wealth of imagery that wins the contest, but the skillfully framed hypotheses. Take, for example, the brilliant Sargent S. Prentiss and analyze one of his most ornate addresses, that in behalf of Wilkinson, and it

will be found that he used his imagination quite as much in framing hypotheses as in ornamenting his address. He outlines his principal hypothesis at the outset, and concludes his discussion of it by saying: "I have exhibited to you an almost countless variety of circumstances, the occurrence of which, or any great portion of them, is absolutely incompatible with any hypothesis other than that of the conspiracy which at the outset I proposed to prove. Upon that hypothesis all these circumstances are easily explicable, and in accordance with the ordinary principles of human action." Take an advocate of another class, for instances, Charles Phillips. He was not lacking in imagination, but it was not one valuable to the lawyer, and his speeches, being destitute of hypotheses, are little more than empty words expressing no thoughts. They seem like a tawdry suit of clothes upon a lifeless body.

§ 109. **Working hypotheses.**—Provisional or working hypotheses are valuable in prosecuting an investigation "In the course of a research many suppositions are made, and rejected or admitted according to the evidence."[1] We know, for instance, that a man was found mangled and dead on a railroad track, and that he was seen a few minutes before his death in a violent altercation with an enemy. If we knew no more, our provisional hypothesis would be that he entered on the track and was killed by a passing train; for we would have no right to presume that his enemy slew him. If, however, we should find that he had been killed by a pistol ball, then our provisional hypothesis would be that his enemy had killed him. But if, pressing the investigation further, we should discover that his money and watch had been taken, and should also find them in the possession of a stranger who could give no account of his possession, our previous provisional hypothesis would be rejected, and we should conclude that the stranger was the murderer.

§ 110. **Verification of provisional hypothesis.**—A working hypothesis can not be allowed to take a place in the theory

[1] Bain's Logic, 327.

until it has been tested. It will often happen that many provisional hypotheses will fall before a vigorous test. If the hypothesis does not stand the test it must be rejected, although it may have been a favorite one. A source of error in all investigation is the tenacity with which men cling to a theory or hypothesis of their own construction. The reports furnish many instances where cases have been lost because counsel could not, or would not, throw aside a favorite hypothesis. In a practical science like the law there is little tolerance of fanciful hypotheses, and only such as will stand the severest test will be accepted by the courts. It is no doubt painful to yield an hypothesis born of careful study, but when the facts, as they develop, disclose its unsoundness it must be cast aside. It is not wise to attempt to make the facts bend to a provisional hypothesis, unless it is the only one which will avail. When this is the case, then the facts must, if possible, be molded to fit the hypothesis.

§ 111. **Importance of provisional hypothesis in investigating law.**—The provisional or working hypothesis is an important factor in investigating matters of law as well as matters of fact. Investigation of the law of a case can only be successfully prosecuted—except when some lucky accident intervenes[1]—where the mind of the investigator is governed by some definite purpose and seeks to attain a definite object. If the searcher, at the outset, frames a provisional hypothesis, and then sets out to find authority to support it, he will have a guide throughout his exploration. He will certainly reach one of two results, for he will discover that his provisional hypothesis is or is not the correct one. Even if he acquires no other knowledge than that his hypothesis is invalid, this knowledge will have the merit of distinctness, if it has none other. But it is most likely to point to the true hypothesis. Suppose, for example, the facts of the case to be these: The defendant orally promised the plaintiff to indemnify him against loss if

[1] Lucky accidents or conjectures are rare in law suits. "Depend upon it," says Miss Austen, "a lucky guess is never merely luck—there is always some talent in it."

he would undertake as surety on the bail bond of John Doe. Suppose the hypothesis provisionally assumed to be: This verbal contract is within the statute of frauds and is not enforceable. In testing the hypothesis it will be found incorrect;[1] but an important step of progress has been made, for we have ascertained that the hypothesis is not sound, and therefore, upon a plain, logical rule, conclude that the contradictory hypothesis is the true one. Take another and somewhat more complex example: The defendant leased to Richard Roe a building. Roe sub-leased it to John Doe. The building was negligently suffered to get so much out of repair as to be unsafe, and the plaintiff, in going to a public entertainment held in the building, stepped into a hole and was injured. Here the question of law would be as to the party liable. If the working hypothesis be that the defendant is liable, it would be unsound because the tenant, and not the landlord, would be liable.[2] But although the provisional hypothesis is erroneous, still it is of great practical benefit, because it brings out into a clear light one of the great questions in the case, and thus leads to the discovery of the governing principle, which is the true hypothesis that is to be incorporated in the theory of the case.[3] In truth, every proposition of law is at the first a mere unproved or provisional hypothesis. It is not always necessary to refer to books to prove it, for it is proved, and sometimes without conscious effort, by reference to principles laid away in the mind. Until verified, it is nevertheless a mere supposition, not entitled to be placed in the theory of the case. As long as it stands as a mere unproved assumption it is unsafe to attempt to advance or to depend upon it.

§ 112. **Search for signs.**—Hobbes quaintly says: "The best prophet is naturally the best guesser, and the best guesser he that is most versed and studied in the matter he guesses at, for he hath the most signs to guess by."[4] The more signs the in-

[1] Wood on Frauds, 289; Anderson *v.* Spence, 72 Ind. 315.

[2] Ryan *v.* Wilson, 87 N. Y. 471, S. C. 41 Am. Rep. 384; Cole *v.* McKey, 66 Wis. 500, S. C. 67 Am. Rep. 293.

[3] Quintilian supplies an example of the use of hypothesis. Inst. Bk. V, Chap. x.

[4] The Leviathan, Pt. I, p. 11.

vestigator discovers the swifter his conjectures, and the sounder his hypotheses. Not only is this search for signs of great benefit in the preparation of the case, but it is also of great assistance in the trial, for it arouses attention to the points in the case, and enables the mind to instantly perceive and grasp all the favorable facts developed in the progress of the trial. One who has thought intently upon a matter, and has sought diligently for signs to enable him to discover the true solution of a difficulty, will catch and apply facts that another would pass almost unnoticed. This is strikingly illustrated in the case of inventors; they frame some hypothesis, perhaps an erroneous one, and in the course of their experiments carefully seize and apply each important fact, which one whose mind had not been thus prepared would not observe. The Commissioner of Patents supplies an apt example in his description of Goodyear's discovery: "In one of those animated conversations so habitual to him, in reference to his experiments, a piece of India rubber, combined with sulphur, which he held in his hand as the text of all his discourses, was, by a violent gesture, thrown into a burning stove near where he was standing. When taken out, after having been subjected to a high degree of heat, he saw—what it may be safely affirmed would have escaped the notice of all others—that a complete transformation, and that an entirely new product, since so felicitously termed 'new metal' was the consequence."

§ 113. **Untenable hypotheses impair strength of theory.**— It greatly impairs the strength of the theory of the case if improbable or untenable hypotheses are incorporated in it. The evil result does not end with the overthrow of the untenable hypothesis; it extends much further. Jurors are very apt to imagine that if there is one worthless hypothesis there must be many more; for men usually conclude that errors, like evil things, "do mostly travel in great companies." Logically, the overthrow of an hypothesis ought not to extend beyond the point directly affected, but jurors do not always adhere to logical rules; on the contrary, if they perceive error on one point they

generally extend it to many. It is much better, therefore, to have a few natural and probable hypotheses than many probable ones and some improbable ones. The mind of the investigator himself is likely to be led astray by one improbable hypothesis, although it be in a train with many valid ones, and for his own safety in preparing his case it is necessary to separately test and verify each hypothesis. If this is not done the whole fabric may be imperiled. "One devious step," says Richardson, "at first setting out frequently leads a person into a wilderness of error."

§ 114. **Improbable hypotheses impair force of theory.**—A mere fanciful theory of the case, however artfully constructed, is not a good one, for such a theory will lack the essential element of probability. A theory containing many improbable hypotheses is a bad one. Certainty is not required, but there must be probability. Lord Mansfield said, in delivering one of his judgments: "It is an undoubted truth that judges, in forming their opinions of events and in deciding upon the truth or falsehood of controverted facts, must be guided by the rules of probability; and as mathematical or absolute certainty is seldom to be attained in human affairs, reason and public utility require that judges and all mankind in forming their opinions of the truth of facts should be regulated by the superior number of probabilities on the one side or the other."[1]

§ 115. **Arrangement of facts in theory.**—The probability of a theory depends upon the details almost as much as upon its general frame, for one improbable circumstance may break down the whole structure. The skillful selection and arrangement of details, so that one shall naturally seem to follow another, and all unite in establishing one central conclusion, makes a theory impregnable. It is, therefore, of no little importance that the facts be made to follow in natural order; that is, as if the one naturally resulted from the other without extrinsic aid. In this order they must be lodged in the mind of

[1] Theory of Presumptive Proof, 62; Burrill's Circumstantial Ev., 23; City *v.* Hudnut, 112 Ind. 542–557.

the advocate, so that when they emerge in the course of the development of the theory they shall appear to grow out of each other without the appearance of having been brought together by a preconceived plan. As the facts come out in evidence so will they find lodgment in the minds of the jurors, and if they grow out of each other they will take form there as compact and strong as a "Roman legion." If jurors are compelled to collect together disconnected facts and arrange them in their minds, they will get obscure and confused ideas and will lose sight of many important facts, as well as entirely fail to recognize the relation existing between a series of facts.

§ 116. **Theory should show natural relation of facts.**—It is scarcely less important that the relation between facts be kept prominently in view than that the facts themselves be made conspicuous, for relation adds strength, and often makes facts convincing by the probability with which it clothes them. It is not to be expected that jurors in the swiftly passing hours of a trial can establish the relation between facts. To do this work skillfully and well requires careful deliberation and a disciplined mind. The relation between a series of facts, and its importance, will be quickly apprehended when pointed out; but it sometimes requires a keen vision to clearly note the relation and justly point it out. The probability of a theory is the great end to be attained, and one of the chief things in clothing it with probability is that of clearly and strongly establishing a natural relation between the facts, and of unfolding them to the jury so that they may perceive that one grows out of another, as though their development could take place in no other way.

§ 117. **Subsidiary facts.**—It is seldom that a case arises in which the relation between a series of facts is not one of the most important elements in establishing probability; but there may be cases where a single fact rules and decides the controversy, and in such a case all that is needed is to make that fact so conspicuous that it can not be overlooked, so that the simpler

the theory the better. The instances are few in which there is no necessity for establishing and developing a relation between the facts in order to make the theory probable. Error is not unfrequently committed in assuming that one or two material facts so fully control the case as to need no aid from subsidiary facts, and to avoid this error it is necessary to carefully consider the probable effect of these facts as well as the force of facts that will probably be brought against them. It is natural, for instance, to assume that one seen with a pistol in his hand near the dead body of a person slain by a pistol shot is the murderer, and yet it would be hazardous to depend on that circumstance alone, for it might be explained on many hypotheses; but if to that circumstance be added evidence of previous threats on the part of the accused, or evidence that he bore a grudge against the deceased, the guilt would be so probable as to render conviction certain. This is a very simple case, devoid of all complexity, and yet it illustrates (what, indeed, is so plain as to scarcely need illustration) the importance of securing subsidiary facts, and so arranging them that their relation shall clearly appear, that it shall seem the only natural one, and that it shall so bind the series of facts together that they will constitute a line leading to the desired conclusion.

§ 118. **Principal facts supported by minor facts.**—It will be found that by far the greater number of cases are complex, composed of principal facts surrounded by minor ones, and that the strength of the case depends, not so much upon these principal facts alone, as upon the support given them by the probabilities created by establishing and developing the relation of the minor facts. It is not possible to accurately determine the relation between facts without looking at them from opposite sides, for it very often happens that contestants will claim with plausibility that the relation of the minor fact is such as to support their respective contentions. It is often claimed for the defense in criminal trials that the malignity of the homicide shows insanity, while on the part of the State the same fact is relied on as establishing one of the prin-

cipal elements of the crime, and the fact establishes one or the other of these hypotheses according to its relation to the other facts. Thus, if it should appear that the previous relations between the slayer and the slain were those of love and affection, the ferocity of the crime would tend in a strong degree to establish the probability of the hypothesis of the defense; but, if it should appear that hatred and ill-will existed, then the ferocity manifested in the manner of committing the homicide would strongly tend to support the hypothesis of the prosecution. The illustration given is a simple one, but in practice few such simple cases are encountered, for, in the great majority of cases, the facts are complex, the gaps unfilled by positive testimony are numerous, and the details spread over a great field, so that no probable theory can be formed without carefully establishing and developing a natural sequence between the facts.

§ 119. **Theory must inspire belief.**—The validity and value of a theory depend upon its power to inspire a belief that it is true, for what creates a belief of truth is accepted as a satisfactory solution of the controverted questions of fact in the contests of the forum. Belief, in matters of law, is conviction, since demonstration can not be attained. What men thoroughly believe they accept as true. A theory which so strongly commends itself to the judgment of men as to create a strong belief of its truth is the path to success. Knowledge in all matters not susceptible of demonstration is, at bottom, belief. Men think, and not unreasonably, that they have attained knowledge, when they have, in fact, attained a settled belief. The child does not doubt its mother's love, and yet no higher certainty of its existence can be attained than a belief that it exists. Dr. McCosh has some very sound observations upon this subject, and supplies this apt quotation from Goethe: "I receive mathematics as the most useful and sublime science as long as they are applied in their proper place, but I can not commend the misuse of them in matters which do not belong to their sphere, and in which, noble science as they are, they

seem to be mere nonsense; as if, forsooth, things only exist when they can be mathematically demonstrated. It would be foolish for a man not to believe in his mistress' love because she could not prove it to him mathematically. She can mathematically prove her dowry, but not her love."[1]

§ 120. **How to secure belief.**—If the hypotheses which form part of the theory, and the evidence on which they rest, are such as awaken a firm and decided belief, there is conviction. To secure this belief in the right and justice of his client's cause is the leading purpose of the skillful advocate, and this purpose leads him to so construct his theory that men will believe it. This is done by making it appear that the jurors, had they been in the situation of the witnesses, would have seen what they saw, would have testified as they testified, and would have acted as the parties are represented to have acted. "As in water face answereth to face, so the heart of man to man," says the proverb; and men believe what they suppose it likely they would themselves have said or done, but reject that which it seems to them they would not have done had they been situated as the parties were, and have been of like character and disposition. If the jurors are convinced that a man is wicked, then they are ready to believe that he has done a wicked deed; but if they are convinced that he is good, they are slow to believe evil of him. This is one great reason why character is so often of importance to a person accused of crime; and it is for this reason that the witness whose demeanor shows him to be honest so often carries conviction to the minds of the jurors as against many witnesses.

§ 121. **Illustrative theories.**—A theory which is unbelievable is a bad one. Of such a theory, Bacon supplies an apt and an amusing example in the story of the thief who averred, "That passing over several grounds about his lawful occasions, he was pursued close by a fierce mastiff dog, and so was forced to save himself by leaping over a hedge, which, being of an agile body, he effected; and in leaping, a mare standing on the other side of the hedge, he leaped upon her back, who running

[1] Logic, 101.

furiously away with him, he could not by any means stop her until the next town, in which town the owner of the mare lived, and there he was taken and arraigned." The theory framed by Dickens' great criminal lawyer, Jaggers, in defense of the woman who afterward became his housekeeper, is an example of one that men would readily believe true, because consistent with experience.[1] A very ingenious and well-constructed theory is that of DeQuincey in behalf of Judas Iscariot. It is, indeed, a marvelous exhibition of skill in constructing and maintaining a theory that goes far to secure belief, although based upon a very slender foundation of fact.[2] The theory of the defense in the Webster case is an example of one lacking the virtue of probability. In that case the principal hypothesis, and the one which really constituted the theory of the defense, was, that Dr. Parkman was killed after leaving the medical college, by some person unknown to the prosecutor or the defendant, and his body carried into the rooms occupied by Webster, and there disposed of and concealed. This was in itself a highly improbable theory, and when applied to the facts developed by the evidence its improbability was greatly increased. A far more probable theory for the defense was that suggested by Choate, which we have already stated. The theory adopted by the prosecution was much more probable, and was simple and natural in its construction and development. That theory was that the deceased, between two known hours of a designated day, entered the lecture rooms of Professor Webster; that there was an interview between the two men; that Parkman never left the rooms alive; that the parties never separated; that Parkman was then and there slain, the remains disposed of by Webster, and by him kept concealed until their discovery the

[1] Great Expectations, Chap. xviii.

[2] Works of DeQuincey, Vol. VIII, p. 223. Another admirable piece of work is that of Mr. Birrell in his defense of Falstaff. The essay to which we refer will bear close study, for its hypotheses are ingenious, its use of details is adroit and its array of facts favorable to Sir John surprisingly strong. Its rich vein of humor detracts somewhat, of course, from its effectiveness as a defense of a man of many infirmities, but it does not conceal the ingenuity of the hypotheses, nor the keenness of the analysis. Obiter Dicta, 200.

week after the murder.[1] Cicero's theory of Milo's defense possesses in a high degree the virtue of probability, and had it been developed to the judges Milo would most likely have been acquitted. The theory of the defense in the case of Mrs. Wharton, indicted for the murder, by administering poison, of General Ketchum, was that he died from the effects of laudanum with which he secretly dosed himself; and so probable seemed this theory to the jury that it did much to secure a verdict of acquittal, although subsequent developments in medical science tend strongly to show that neither the hypothesis of the prosecution nor that of the defense was the correct one, but that death resulted from a disease then comparatively unknown to the physicians of that part of the country.

§ 122. **Consequences to which theory leads to be considered.**—The consequences to which a theory will lead is a matter for careful thought, for it is unquestionably true that jurors are more often controlled by their judgment of the consequences to which a course of action will lead than by any other one thing. Jurors care little for consistency or for logic in comparison with consequences which seem to them to be evil, and they will be slow to follow any line that appears to them to lead to bad results, but quick to follow one that seems to lead to good results. They may not always take a just view of consequences; they do, indeed, often go astray in this particular, but they always keep a keen eye upon the probable consequences of a verdict. Nor do courts refuse to look to consequences. Thus, in one case it was said: "Let us test the principle now involved by a more extreme case than the one before us, but which will be *experimentum crucis*. If we can show that a principle logically carried out leads to an absurdity, it is conclusive against it."[2] Chief Justice Taney, in the course of one of his opinions, uses this language: "And what would be the results of this doctrine of implied contracts on the part of the states, and of property in a line of travel by a cor-

[1] Bemis' Report of Professor Webster's Trial, 287, 288.

[2] Palairet's Appeal, 67 Pa. St. 479, S. C. 5 Am. Rep. 450.

poration, if it should now be sanctioned by this court? To what results would it lead us?"[1] It is, indeed, one of the fundamental maxims of jurisprudence that, "An argument drawn from inconvenience is forcible in law."[2] Judge Holmes presses this principle very far, for he says: "The life of the law has not been logic, but has been experience."[3] If judges yield so much to experience, it can not be doubted that it will sway jurors, who care little for abstract principles and less for precedents.

§ 123. **Theory should be consistent with experience.**—Jurors yield to their own experience rather than to the views of other men. They will often construct for themselves theories irrespective of the law as charged by the court. They will frequently be guided only by their experience in determining what the result of their verdict is likely to be, and they will reluctantly follow any other guide, if, indeed, they will follow it at all. This consideration is one that should control in no small degree the construction of the theory upon which counsel place the cause of their client. If the mental characteristics of the jurors can be ascertained in advance, it is prudent, as far as possible, to mold the theory to them; but as this can seldom be done, it is necessary to secure such a jury as will readily appreciate and adopt the theory constructed. By the term "experience" we do not mean actual knowledge derived from things really known to the jury, but knowledge resulting from their habits of thought and course of life. Archbishop Whately says of the word "experience": "The word, in its strict sense, applies to what has occurred within a person's own knowledge. Experience in this sense relates to the past alone. Thus it is that a man knows by experience what sufferings he has undergone in some disease.[4] More frequently the word is

[1] Charles River Bridge *v.* Warren Bridge, 11 Peters, 420; Lake Shore & Mich. So. Ry. Co. *v.* Cin., W. & M. Ry. Co., 116 Ind. 578.

[2] Broom's Legal Maxims, 184; Ram's Legal Judgments, 113; The Illinois, etc., Co. *v.* Fix, 53 Ill. 131.

[3] Common Law, 1.

[4] "How else," says Sir Arthur Helps, "is knowledge to be acquired, unless by making men such as gods, enabling them to understand without experience?"

used to denote that judgment which is derived from experience in the primary sense, by reasoning from that in common with other data. Thus, a man may assert on the ground of experience that he was cured of a disorder by such a medicine, that that medicine is generally beneficial in that disorder. It is in this sense only that experience can be applied to the future, or, which comes to the same thing, to any general fact, *e. g.*, when it is said that we know by experience that water exposed to a certain temperature will freeze."[1] It is on this experience that many of the distinctions and many of the rules of law are founded, and the verdicts of juries almost always based. Judge Holmes says: "The distinctions of the law are founded on experience, not on logic. It, therefore, does not make the dealings of men dependent on mathematical certainty."[2]

§ 124. Appeal to experience.—It is possible that the learned author carries his doctrines somewhat too far, but it is undeniably true that experience is a chief factor in all legal contests. There are, indeed, many cases where the controversy is left almost entirely to be determined by the experience of the triers.[3] In matters of law, the experience which is to be accepted as the rule of conduct can not be that of the individual judge, but it must be that found in the declarations of the Legislature, the decisions of the courts, and the books of writers of acknowledged authority.[4] The earlier English judges were much more under the influence of Aristotle and his followers, the schoolmen, who narrowed his doctrines and dwarfed his principles, than the modern judges, and the consequence is that they often sacrificed substantial rights to subtle and senseless distinctions.[5] The law has been broadened and liberalized by the practical thinkers who have been influenced more by the teachings of experience than by the formal logic of the schoolmen. But, after all, the experience which guides judges is,

[1] Whately's Logic, Appendix V.

[2] Common Law, 312.

[3] Holmes Common Law, 56, 147, 149, 152, 157, 158, 162.

[4] Mr. Mayne clearly shows the evils of a system of jurisprudence composed of particular instances and destitute of fixed principles. Ancient Law, 76.

[5] De Laudibus Legum Angliæ, 7, note of Mr. Amos.

for the most part, that transmitted to them from the past, and it is well that it is so, since men often imagine that they are taught by their experience when, in fact, they are influenced by very different causes. While this is true, yet an appeal to experience is almost always a strong one in forensic disputes.

§ 125. **Theory should be clear and logical.**—The theory of a case should be clear and harmonious, for if there is obscurity and conflict it can neither be effectively developed nor strongly presented to the triers of the cause. Clearness is secured by a just method of arrangement, giving to each particular fact and principle of law the prominence which its importance merits, and preventing it from being obscured or hidden by other facts or principles. Facts must not be jumbled together in disorder, one left lying over in the way of another; nor must principles of law be thrown together in a mere huddle. The theory should be so arranged that the facts and principles may be marshaled in logical order, and their development be not unlike the march of a column of well-disciplined soldiers. A straggling, disjointed theory is as little likely to prevail as a force of stragglers matched against a body of disciplined troops. There are, as we have already suggested, two principal elements in all well constructed theories, the law and the facts, and in the construction of the theory these must be kept separate, yet so arranged as to form parts of one harmonious system. The modes of trying questions of law and questions of fact are different, and the mode of presenting them is also essentially different, so that if they are jumbled together confusion is produced. Where there is confusion there is almost always weakness, although there are cases where some of the weak places may be concealed by confusing the surroundings; and there are other cases where the strong points of an adversary may be parried by obscuring them. It is, however, the safest general rule to keep the interdependent parts of law and facts from so blending as to prevent their clear perception and just use. If this is not done, the theory will not be a safe one, and diffi-

culties will be encountered at every important step in the progress of the cause.[1]

§ 126. **Matters of law and matters of fact should be kept separate.**—The confusion of matters of law with matters of fact interferes with the work of arraying and introducing evidence, makes it difficult to properly prepare instructions, and very greatly embarrasses the advocate in presenting his case in argument. Cases, as the books show, are often lost by a failure to so separate the two elements of law and fact that the one can be clearly presented to the court, and the other to the jury. It is, indeed, not always easy to discriminate matters of law from matters of fact, but it is a work which must be done, and well done, or no adequate and sound theory can be constructed.

§ 127. **Presumptions.**—Presumptions are important factors in forensic contests, and the theory of the case can not be well constructed without giving due weight and place to presumptions, both of law and of fact. Presumptions of law are, of course, of much wider sweep than presumptions of fact, and are, in effect, rules of law requiring that from particular facts particular inferences shall be made. These presumptions confine the inference to a designated conclusion, and neither the court nor the jury will be allowed to disregard them.[2] They generally have the force and effect of a *prima facie* case;[3] but they will not always supply proof of a substantive fact,[4] and a presumption can not be based upon a presumption.[5]

§ 128. **Use and avoidance of presumptions.**—It is not very difficult for one who has a full knowledge of the facts, and an adequate acquaintance with the rules of evidence, to determine, in preparing his theory of the case, what presumptions of law

[1] Darling *v.* Westmoreland, 52 N. H. 401, S. C. 13 Am. Rep. 55, p. 63; Gray *v.* Jackson, 51 N. H. 9, S. C. 12 Am. Rep. 1.

[2] Best's Principles of Evidence, §§ 42, 304; Justice *v.* Lang, 52 N. Y. 323.

[3] Bates *v.* Pricket, 5 Ind. 22; Montgomery *v.* Wasem, 116 Ind. 343, 355; Cleveland, etc., Ry. Co. *v.* Newell, 104 Ind. 264.

[4] United States *v.* Ross, 92 U. S. 281.

[5] Manning *v.* Ins. Co., 100 U. S. 693, 698.

he can employ to sustain his cause, and what may be employed against him. If the adverse presumption is one that can not be rebutted, then, if the theory can not be so framed as to avoid it, the case is hopeless. But many of the conclusive presumptions of law may be avoided by a skillfully constructed theory. If the presumption of law is rebuttable, then the better course is to make provision for rebutting it. There are, however, cases, where a rebuttable presumption may be entirely avoided, and it is sometimes prudent to make provision both for avoiding it and for rebutting it by proving facts that make it ineffective. But where the combination of the two methods will probably produce material inconsistency, it is better to adopt a single method and strictly adhere to it, for inconsistency is an infirmity that greatly weakens a theory.

§ 129. **Presumptions of fact.**—Presumptions of fact can not always be fully anticipated, but, when anticipated, they are much more easily disposed of than presumptions of law. Presumptions of fact arise from facts, and are, in reality, mere inferences of fact naturally arising from proved or admitted facts. "Presumptions of fact," it was said in one case, "are but inferences from other facts and circumstances, and should be made upon the common principles of induction."[1] In another case it was said: "Presumptions of fact are at best but mere arguments, and are to be judged by the common and received tests of the truth of propositions and the validity of arguments."[2] It is evident, therefore, that presumptions of fact can not be fully perceived at the time the theory of the case is prepared. But by laying out in the mind the whole case, with its prominent features and its minute facts, one may be able to conjecture with a fair degree of certainty what presumptions of fact will arise, and he who does not do this work with scrupulous care will find many a jolt and shock, if, indeed, he does not fare worse, in developing the case. With the facts, and all the facts, the principal as well as the minor ones, fully and distinctly in his mind, one may look along the lines the case must

[1] O'Gara *v.* Eisenhour, 38 N. Y. 296. [2] Lawhorn *v.* Carter, 11 Bush. (Ky.) 7.

traverse, and with much success conjecture what presumption will arise at this point and what at that; and if this work is thoroughly done, provision may be made for making good use of favorable presumptions, and for avoiding, weakening, or destroying those that are adverse. This work can not be well done unless the man who undertakes it knows the materials he has at command, the grounds over which the contest will be waged, the difficulties he must encounter, and the opposition he will meet. Some of these things it is his own fault if he does not fully know. The force of the opposition he can only conjecture, but conjecture it he must as best he can. If he must err in this conjecture, the error will seldom do harm if it be one attributing too much strength to the enemy, but it may be a very serious one if the strength of the enemy is underrated.

§ 130. **Importance of presumptions.**—Presumptions are of more weight than careless thinkers attribute to them. He who can make the presumptions fight on his side, even if they are no more than presumptions of fact, is almost sure to be the victor. Cases are often lost and won on presumptions. Indeed, in many cases the contest is a battle of presumptions.[1] A theory that provides for creating presumptions, and arrays them in the strongest positions, is a strong one. It is strong because it well disposes of the forces at command; since in doing the work he who does it acquires a knowledge of the case, and knows the points of strength and weakness, knows where ambushes are to be expected and how they are to be avoided. In more ways than one is benefit derived from a close study of the presumptions which will arise as the case is unfolded

§ 131. **Defective theories.**—Thin spun theories will not do; there must be facts from which the presumptions naturally arise, as effect follows cause. But it is better to expend ingenuity in conjecturing what presumptions will arise, even though the conjectures be unsubstantial, than to construct a theory without looking along the line and endeavoring to con-

[1] The Louisville, etc., Co. *v.* Thompson, 107 Ind. 442.

jecture what inferences may be drawn from the facts as they emerge from the evidence. It is well, however, not to permit a favorite hypothesis to become so influential as to exclude others, stronger and more probable, that come into view as the case progresses. Men often err in obstinately attempting to establish a favorite hypothesis.[1] The verification of the theory is the last work to be done prior to embodying it in the pleadings.[2] This work demands sound judgment and close study. Every step should, if possible, be verified by an appeal to the facts, to the authorities and to reason. The theory will, in the progress of the trial, be rudely assailed, and if there be a weak spot in it, whether in the element of fact or of law, it will be exposed. It is a sound rule, insisted upon by all the writers upon advocacy or kindred subjects, never to underrate the power of your adversary. It is unsafe to leave a single part of the theory unverified. Things that appear strong at the first inspection are often found weak on a second investigation. Writers on rhetorical subjects inform us that what seems perfect when read while the mind is "warmed by the act of creating" seems weak and imperfect when examined after the mind has cooled. So it is of a theory; when the mind is warmed by the creative act no imperfections are discovered, but when this warmth has passed away the cool judgment detects and exposes many weak spots. Even when the mind has cooled it is not always easy for it to perceive the weak places in a thing of its own creation. Men cling to theories of their own invention long after others have perceived their utter unsoundness

[1] The "Country Parson," in his essay on "Screws," declares that most men have "a twist" in their mental make up that causes them to cling to theories of their own construction, even after their absurdity has been demonstrated, and Montaigne, in his essay on "Vain Subtleties," calls attention to the same peculiarity in human nature.

[2] The theory must be given effective form in the pleadings, since the issue framed by them determines the scope of the judicial investigation. A finding or verdict entirely outside of the issues is valueless when properly assailed. Brenner *v.* Bigelow, 8 Kan. 496; Mays *v.* Foster, 26 Kan. 518; Newby *v.* Myers, 44 Kan. 477; Thomas *v.* Dale, 86 Ind. 435; Boardman *v.* Griffin, 52 Ind. 101.

§ 132. **Theory should be invulnerable.**—The advocate, of all men, needs to be careful to leave no vulnerable places; for the keen eyes of his adversary will leave no weak place undiscovered, and when discovered, then, be sure, a thrust will follow swift and strong. It is not to be forgotten that the advocate in constructing his theory is very likely to be deceived. But not so his adversary. He, least of all men, is likely to be misled, for he is the enemy of the theory, and all his powers are bent upon discovering the weak places. His work is that of destruction, not of construction.

§ 133. **Contests of forum likened to naval engagements.**—Writers have again and again, as we have said, likened the contests of the forum to those of war. There is, as has been noted, a close resemblance, and it is not to be wondered that in the opinions and in the books we find terms taken from the art of war. Closely as the legal contest resembles those of military campaigns, it resembles a naval engagement even more closely. The theory of the case outlined in the pleadings is to the advocate as the ship to the sailors who "fight by sea." They may veer and tack, but they must do their fighting from their ships. So with the advocate; he must fight within his theory. At the risk of doing with our illustration what Choate said the constable did with the participle, we press it a little further, and liken a cranky and feeble theory to a leaky and unseaworthy craft.

§ 134 **Nature of work in constructing theory.**—There are in complex cases many points to be carried by assault, many weak places to be defended, and many posts to be fortified. The task of constructing a theory in such cases is intricate and difficult. This part of the advocate's work is very like that of a general planning a campaign; but in some respects it is even more difficult, for the reason that the theory must account for many things by showing their origin and developing their character. Like the general, the advocate must foresee and provide against the movements of his adversary; for that man

will go far astray who looks alone to his own side and takes no thought of what his antagonist may do. It is not a contest or a campaign where only one side moves; nor will it do to take it for granted that the adverse counsel will pursue some old and often-tried tactics. One who rests upon such a supposition will most likely meet the fate which befell the Austrian generals who supposed that, as a matter of course, the young Frenchman would fight according to the ancient and well-known system.

§ 135. **Preparation and arrangement of details.**—The resemblance between the process of planning a campaign and constructing a theory extends to the work of the preparation and arrangement of details. Success demands that there should be "an almost ignominious attention to detail." Little things often do great mischief; a hole in the bottom of a ship may bring destruction as surely as if the vessel were torn plank from plank; the breaking of a diminutive bolt may stop the machinery of a great factory; the displacing of a spike may bring destruction to a railroad train and death to its passengers. The omission of a demand, the failure to give a notice, or the neglect to make some formal proof, may bring irretrievable disaster. An omitted item, though easily obtained, may be fatal to success. One who walks through the patent office at Washington is struck with the great number of rejected models. Many of them—indeed, almost all of them—are striking specimens of mechanical skill and inventive genius, and perfect in every part except one, but that one ruins all. It is so of many theories; they are perfect in outline, but defective in detail. To the mind of the author they seem serviceable for actual work, but when put to the test they prove defective in some part. Their framers are not mindful of the rule that no part of a thing, such as a theory, is stronger than its weakest part. The fabric may be perfect in every part except one, but the one imperfection may shatter the whole when the collision comes. It is of little importance that a fortress be defended at every point save one, if the undefended point be sufficient to

let in the assailants. This holds good of a theory of a case; for, no matter how many strong points it may have, it will serve no useful purpose if it has one weak place that will let in the assailants and compel a capitulation. It is the great purpose of the theory to lay out the road to be passed over to success, and to provide the means which will insure the victory. If there are gaps that can not be crossed, or forces that can not be brought into the conflict at the right time and place, the theory has not accomplished its purpose. If, as sometimes happens, the theory contemplates only what may be done after the conflict has ended, it will be of as little value as the tactics of the Knight of La Mancha.

§ 136. **Verification of theory.**—Hostile criticism is, in every instance, to be expected. Positions must be laid down and entrenched with the knowledge that the strongest array of force and the keenest weapons that hostile minds can secure will be brought against them at every point.[1] The work of verification, therefore, needs to be thorough and searching. Judge Cooley, in his introduction to the edition of Blackstone's Commentaries edited by him, supplies an example of the close work that must be done in verifying a theory.[2] In the physical sciences each step is verified by experiment before a theory is accepted, and the study of the work of the philosophers who have devoted their time and talents to the discovery of physical laws and theories is an excellent discipline for the advocate.[3] He can, however, make no actual experiments; all that he can do is to refer his inferences and hypotheses to the test of what Cicero calls "reason in its intense and primitive purity."

§ 137. **Fallacies to be guarded against.**—The way of a framer of a theory is so thickly beset with fallacies that nothing but unremitting care will prevent them from creeping into his

[1] "In determining the theory of the case, Rufus Choate was never satisfied until he had met every supposition that could be brought against it," and this is the course all advocates should follow.

[2] Cooley's Blackstone, xvii.

[3] Devey's Logic, 234; Bain's Logic, 297; Mill's Logic, 338.

mental fabric. One needs a mental microscope to detect them, and, since that can not be obtained, its place must be supplied by the power of attention, directed with all the vigor the mind can master upon the work. The reports abound in examples of a fact or principle unduly assumed.[1] Examples of the fallacy of *non sequitur* are numerous.[2] The point in dispute is often mistaken.[3] The fallacy of confusion not infrequently leads the advocate astray.[4] Again and again advocates proceed in a circle, "and beg the question."[5] A mistake is often made as to who has the burden of proof on a particular hypothesis or proposition.[6] Assuming that cases are analagous when they are not is a prolific source of error.[7] The investigator, as, indeed, the reasoner in public, is sometimes misled by assuming that the presumption is in his favor when it is against him; on the other hand, he is often at fault for not availing himself of a presumption in his favor.[8] In some instances the advocate is deceived by an appearance of similarity in the facts when there is, in reality, an essential difference. In other cases he is deceived by an apparent difference where there is no real one, for, as Dr. Holmes says, "a great many things, we say, can be made to appear contradictory simply because they are partial views of a truth, and may often look unlike at the first, as the front view of a face and its profile often do."[9]

§ 138. **Inconsistent hypotheses to be avoided.**—Rival and conflicting hypotheses are sometimes accepted, and seldom without harm. Incomplete and inconclusive hypotheses not only

[1] Cincinnati, etc., Co. *v.* Carper, 112 Ind. 26, 34, 35; Cuff *v.* Newark, etc., Co., 35 N. J. Law, 17, S. C. 10 Am. Rep. 205, 209; Robbins *v.* Burn, 54 Ill. 48, S. C. 5 Am. Rep. 75, 80; Cooke *v.* Millard, 65 N. Y. 352, S. C. 22 Am. Rep. 619, 625.

[2] Commissioners *v.* Miller, 7 Kan. 479, S. C. 12 Am. Rep. 425, 454.

[3] Swank *v.* Hufnagle, 111 Ind. 453, 454; Theory of Thought, 276; Sidgwick Fallacies, 189.

[4] Austin's Jurisprudence, 72.

[5] Eaton *v.* Boston, etc., Co., 51 N. H. 504, S. C. 12 Am. Rep. 147, 157; Fallacies, 196; Theory of Thought, 282.

[6] Fallacies (Sidgwick), 151; Theory of Thought, 279.

[7] Matter of Washington Avenue, 69 Pa. St. 352, S. C. 8 Am. Rep. 255, 261.

[8] Bates *v.* Prickett, 5 Ind. 22; The Louisville, etc., Co. *v.* Thompson, 107 Ind. 442.

[9] The Professor at the Breakfast Table, 42.

destroy the symmetry and harmony of the theory, but they also make it so confused and obscure that it is not likely to accomplish any substantial results. To such theories may be applied the words of Bunyan: "They go not uprightly, but all awry with their feet; one shoe goes inward and another outward, and their hosen out behind; there a rag and there a rent, to the disparagement of their Lord." It is only the good and perfect materials that should find entrance into the theory. The construction of a sound theory requires the highest powers of the human intellect. Mr. Donovan says, with truth and force: "The science of good practice is that art which teaches a builder to discard bad timber, to prepare what he uses with precise care, and fit it with precision to the members of the building; that teaches a mason to make joints before reaching the building he is erecting. The plan in the brain is the science of it all."[1]

§ 139. **Importance of verification of theory.**—A theory not well constructed may deprive its framer of advantages that a good theory would secure him, and impose upon him burdens that a good theory would relieve him from carrying. A theory not radically bad may still be weak, and by its weakness make uncertain that which by thought and care might be made certain. Verification will, if skillfully and thoughtfully conducted, expose the weak places, and enable the worker to strengthen them, and it will also enable him to make conspicuous the strong places. The theory, although not radically wrong—that is, wholly untenable—may still be defective in many respects; thus, it may be so constructed as to concede what might better be denied,[2] or to deny what might better be conceded; or it may needlessly put the burden of proof upon one party where with advantage it might be placed upon the other; or it may assume that it is necessary to prove much more than the law requires; or it may unnecessarily provide for matters of description, and lead to a fatal failure of proof, where there was no necessity for

[1] 22 Central Law Journal, 48.

[2] Quinn *v.* People, 123 Ill. 333, S. C. 15 N. E. Rep. 46; Ohio & M. R. Co *v.* Wachter, 123 Ill. 440, S. C. 15 N. E. Rep. 279, 280.

particularity of description. These hints are, we assume, sufficient to lead the framer of a theory to carefully work out and verify his theory before he subjects it to the blows and buffets of the trial. A verification may prove that, while his theory is not totally unsound, it is yet infirm, and this consideration a prudent worker will deem enough to make him push his verification much further than a mere inquiry as to whether it is in its general frame and outlines an available one. An advocate, although he may not totally mistake his remedy, may yet be greatly embarrassed by an infirm or overburdensome theory. Care and work will be well repaid when bestowed upon the preparation of the theory. Be the theory good or bad, his work on the trial, and throughout all the case, will be controlled and limited by it, for the court will hold him to it with a firm hand.[1]

§ 140. **Trial court theory prevails on appeal.**—The theory upon which a cause is tried continues until the end, even though the case goes to the court of last resort.[2] This rule is adhered

[1] Louisville, etc., Co. *v.* Wood, 113 Ind. 544; Carver *v.* Carver, 97 Ind. 497, 516; Graham *v.* Nowlin, 54 Ind. 389; Quinn *v.* People, 123 Ill. 333, S. C. 15 N. E. Rep. 56; Ohio & M. R. Co. *v.* Wachter, 123 Ill. 440, S. C. 15 N. E. Rep.–279, 280.

[2] Tomlinson *v.* Ellison, 104 Mo. 105, S. C. 16 S. W. R. 201; La Fayette, etc., Co. *v.* Kleinhoffer, 40 Mo. App. 388; Trigg *v.* Taylor, 27 Mo. 245; Bull *v.* Coe, 77 Cal. 54; Capital Bank *v.* Armstrong, 62 Mo. 59; Walker *v.* Owen, 79 Mo. 563; Wheeler *v.* American, etc., Co., 6 Mo. App. 235; In re Reyder's Estate, 38 N. Y. St. Rep. 29, S. C. 59 Hun, 618; South Omaha, etc., Bank *v.* Chase, 30 Neb. 444, 46 N. W. R. 513; Pullman, etc., Co. *v.* Central, etc., Co., 139 U. S. 62; Perry *v.* Beaupre, 6 Dak. 49; Conklin *v.* Plant, 34 Ill. App. 264; Senft *v.* Manhattan, etc., Co., 14 N. Y. Supp. 876; Graham *v.* Nowlin, 54 Ind. 389; Carver *v.* Carver, 97 Ind. 497; Lake Erie, etc., Co. *v.* Acres, 108 Ind. 548; Brink *v.* Reid, 122 Ind. 257; Feder *v.* Field, 117 Ind. 386, S. C. 20 N. E. R. 129; Manifold *v.* Jones, 117 Ind. 212, S. C. 20 N. E. R. 124. Where parties try a cause upon the theory that it is a suit in equity they can not afterwards insist that it was an action at law. Farmers' Bank *v.* Butterfield, 100 Ind. 229; Ikerd *v.* Beavers, 106 Ind. 483; Jarboe *v.* Severein, 112 Ind. 572; Wallace *v.* Harris, 32 Mich. 380; Dunbar *v.* Locke, 62 N. H. 442; Davidson *v.* Morrison, 86 Ky. 397, S. C. 5 S. W. R. 871; Rynes *v.* Dumont, 136 U. S. 354. Where a party tries a cause as an action at law he will not afterwards be heard to aver that it was a suit in equity. Brown *v.* Home Savings Bank, 5 Mo. App. 1; Adams County *v.* Hunter, 78 Iowa, 328, S. C. 43 N. W. R. 208. Where parties insist upon a specified construction of a contract in the trial court, they will be

to with great strictness.[1] The rule is necessary in order to secure justice by preventing parties from shifting ground and from misleading their opponents and the trial court.[2] It is

held to it on appeal. Metzler *v.* James, 12 Col. 322, S. C. 19 Pac. R. 885; Barrett *v.* Fisch, 76 Iowa, 553. So, where parties insist in the court of original jurisdiction that a contract is valid, they can not successfully impeach it on appeal. Russell *v.* Rosenbaum, 24 Neb. 769, S. C. 40 N. W. R. 287. Parties who sue in contract when they should have sued in tort must abide by their original theory. Samuels *v.* Blanchard, 25 Wis. 329; Salisbury *v.* Howe, 87 N. Y. 128; Lockwood *v.* Quackenbush, 83 N. Y. 607. Asking instructions upon a specific theory precludes a party from availing himself of a different one. Louisville, etc., Co. *v.* Wood, 113 Ind. 544; Doly *v.* Gillett, 43 Mich. 202. See, upon the general subject, Downard *v.* Hadley, 116 Ind. 131, S. C. 18 N. E. R. 457; Spickerman *v.* McChesney, 111 N. Y. 686, S. C. 19 N. E. R. 266; Fry *v.* State, 81 Ga. 645, S. C. 8 S. E. R. 308; Withers *v.* Jack, 79 Cal. 297, S. C. 21 Pac. R. 824; Myers *v.* Cronk, 113 N. Y. 608, S. C. 21 N. E. R. 984; Black *v.* Washington, 65 Miss. 60, S. C. 3 So. R. 140; Lackey *v.* Pearson, 101 N. C. 651, S. C. 8 S. E. R. 121; Knowles *v.* State, 27 Texas App. 503, S. C. 11 S. W. R. 522; Schriber *v.* Richmond, 73 Wis. 5, S. C. 40 N. W. R. 644; Hamilton *v.* Ames, 74 Mich. 298, S. C. 41 N. W. R. 930; Deveemon *v.* Shaw, 70 Md. 219, S. C. 16 Atl. R. 645; Dorr's Adm. *v.* Rohr, 82 Va. 359; Barr *v.* Hannibal, etc., Co., 30 Mo. App. 248; Booth *v.* Cottingham, 126 Ind. 431, S. C. 26 N. E. R. 84.

[1] Some of the courts have carried the doctrine so far as to hold that the question of the constitutionality of a statute can not be made on appeal if the case proceeded upon a different theory in the trial court. Delaney *v.* Brett, 51 N. Y. 78; Vose *v.* Cockcroft, 44 N. Y. 415. In Powell *v.* Heisler, 45 Minn. 549, the court held that parties who advanced the theory that a statute was unconstitutional, in the course of the opinion it was said: "The plaintiff, in his complaint, alleged that the legislative act authorizing the issuing of these bonds was unconstitutional and void, and that the bonds for that reason were void, and at the trial the court so in effect instructed the jury. To this neither party took exception. It is apparent that the case was tried upon that theory both by the parties and the court, but now, on this appeal, the plaintiff contends that the law was not unconstitutional, and asks that it be so determined by this court. The question is not properly involved in this appeal, and we do not decide it. The plaintiff must be taken to have asserted and conceded for the purposes of this action that the law was unconstitutional, and the bonds invalid, and, the court having disposed of the case upon that theory, the plaintiff can not now, and in the same action, ask that the opposite view be adopted."

[2] Judge Dillon thus outlines the doctrine: "He can not change his base after an appeal." Garland *v.* Wholeban, 20 Iowa, 271; Laverty *v.* Woodward, 16 Iowa, 1. See, also, Barlow *v.* Brock, 25 Iowa, 308; Bishop *v.* Carter, 29 Iowa, 165; Robinson *v.* Keith, 25 Iowa, 321; Coonrod *v.* Benson, 2 Greene (Iowa), 179; McGill *v.* Wallace, 22 Mo. App. 675; Cooper *v.* City of Big Rapids, 67 Mich. 607. And the same rule applies on petition for rehearing. Thus, if the argument in

also required to give consistency and harmony to procedure, and it is, in truth, little more than a logical development or legitimate extension of the elementary rules that the evidence must be confined to issues made by the pleadings, and that the allegations and the evidence must concur. The issue upon which the cause proceeds from first to last is that evolved from the pleadings in the trial court, for new issues[1] can not be made in the appellate tribunal.[2] As the pleadings give form to the theory, and circumscribe the range within which the questions must arise, they must, it is evident, be so framed that all the elements of a cause of action on the one side and of a defense on the other shall be found within the issues tendered by the parties respectively.

§ 141. **Limits of the rule that trial court theories continue effective on appeal.**—The rule that parties will be held to trial court theories by the appellate tribunal does not mean that no new position may be taken, or that new arguments may not be adduced; all that it means is that substantive questions independent in character and not within the issues or not presented to the trial court shall not be first made on appeal. Questions within the issues and before the trial court are before the ap-

the appellate court was made upon one theory, it can not be departed from on petition for rehearing after an adverse decision. Knoth *v.* Barclay, 8 Col. 305, S. C. 7 Pac. Rep. 289; Higgins *v.* Armstrong, 9 Col. 39, S. C. 10 Pac. Rep. 232; Weil *v.* Nevitt (Col.), 31 Pac. Rep. 487 (488).

[1] Nesbit *v.* Donald, 86 Ga. 26, S. C. 12 S. E. R. 183; Messick *v.* Midland R. Co., 128 Ind. 81; O'Leary *v.* Iskey, 12 Neb. 136; San Marcial Land Co. *v.* Stapleton, 4 N. Mex. 33, S. C. 12 Pac. R. 621; Ginn *v.* New England, etc., Co., 92 Ala. 135, S. C. 8 So. R. 388; Sandusky, etc., Co. *v.* Hooks (Iowa), 49 N. W. R. 61; Ophir, etc., Co. *v.* Carpenter, 6 Nev. 393; St. Louis Brokerage Co. *v.* Bagnell, 76 Mo. 554; Blackwell *v.* Smith, 8 Mo. App. 43; King *v.* Rea, 13 Col. 69; Jennings *v.* Bank, 13 Col. 417; South Omaha Bank *v.* Chase, 30 Neb. 444, S. C. 46 N. W. R. 513; Stephens *v.* Motl, 81 Texas, 115, S. C. 16 S. W. R. 731; Gallagher *v.* Bell, 82 Iowa, 722, S. C. 47 N. W. R. 897; Spengler *v.* Kaufman, 43 Mo. App. 5.

[2] Bonknight *v.* Brown, 16 So. Car. 155; Lawrence *v.* Grambling, 13 So. Car. 120; Chamble *v.* Tribble, 23 So. Car. 70; Hickenbottom *v.* Delaware, etc., Co. 122 N. Y. 91; Crippen *v.* Morss, 49 N. Y. 63; Platner *v.* Platner, 78 N. Y. 90; Egan *v.* Menard, 32 Minn. 273; Brown *v.* Minneapolis, etc., 25 Minn. 461; Spencer *v.* Levering, 8 Minn. 461.

pellate court, if duly saved, and new arguments and authorities may, with strict propriety, be brought forward. The rule is further limited by the doctrine that objections to the jurisdiction of the subject may be made at any time, since such objections can not be waived, either by express stipulations assuming to confer jurisdiction or by conduct.[1] The rule is also limited by the doctrine that where a complaint or declaration wholly fails to state a cause of action the question of its sufficiency may be successfully made on appeal.

[1] Schuylkill County *v.* Boyer, 125 Pa. St. 226; Metcalf *v.* Watertown, 128 U. S. 586; Cameron *v.* Hodges, 127 U. S. 322. It is an elementary principle that jurisdiction of the subject comes from the law and never from the acts or agreements of the parties. Sampson *v.* Welsh, 24 How. (U. S.) 207; Mills *v.* Brown, 16 Peters, 525; Keokuk, etc., Co. *v.* Donnell, 77 Iowa, 221, S. C. 42 N.W. R. 176; Weeden *v.* Richmond, 19 R. I. 128; Ware *v.* Henderson, 25 So. Car. 385; Damp *v.* Dane, 29 Wis. 419, 431; Fowler *v.* Eddy, 110 Pa. St. 117, S. C. 1 Atl. R. 789; People *v.* Walters, 68 N. Y. 403, 411; Hardin *v.* Trimmier, 32 So. Car. 600, S. C. 9 S. E. R. 342; Murry *v.* Burris, 6 Dak. 170; Hall *v.* Wadsworth, 30 W. Va. 55; Smith *v.* Myers, 109 Ind. 1.

CHAPTER IV

COURTS.

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§ 142. **Courts the repository of judicial power.**—All judicial power is vested in the courts,[1] although powers of a judicial nature, or, as they are often called, *quasi* judicial powers, may be conferred upon administrators or ministerial officers.[2] The authority to hear and decide controversies involving the rights of persons and things is strictly judicial, and can only be exercised by the courts established by law.[3] It is laid down as a fundamental principle that parties can not by agreement create a judicial tribunal.[4] The doctrine, indeed, is carried

[1] One of the first things to be decided after determining to bring an action or suit is to determine in what court it shall be brought. Mr. Chitty, whose suggestions are always weighty, says: "To determine upon the court to be preferred it is always necessary to ascertain the precise nature of the right, the injury and the remedy; and to protect a defendant well, to examine the nature of the defense and whether it shall be made at law or in equity." The great changes wrought by legislative enactment in England and in America render Mr. Chitty's suggestions less important than they were when he wrote his treatise on general practice, but they are still of importance and value.

[2] Rhode Island *v.* Massachusetts, 12 Peters, 657, 718; Sinking Fund Cases, 99 U. S. 700; *In re* Cooper, 22 N. Y. 67, 82, 84; Crane *v.* Camp, 12 Conn. 463; Betts *v.* Dimon, 3 Conn. 107; Mabry *v.* Baxter, 11 Heisk. 682, 689; *In re* Saline County, 45 Mo. 52; Tindal *v.* Drake, 60 Ala. 170; Shoultz *v.* McPheeters, 79 Ind. 373; Greenough *v.* Greenough, 11 Pa. St. 489; Gregory *v.* State, 94 Ind. 384; Chandler *v.* Nash, 5 Mich. 409; Columbus, etc., Co. *v.* The Board, etc., 65 Ind. 427; Hawkins *v.* The Governor, 1 Ark. 570; Speight *v.* The People, 87 Ill. 595; *Ex parte* Randolph, 2 Brock. (U. S. C. C.) 447; Campbell *v.* Board, 118 Ind. 119, 222; Wight *v.* Wallbaum, 39 Ill. 554.

[3] Andrews *v.* Wheaton, 23 Conn. 112; Hoagland *v.* Creed, 81 Ill. 506; Bishop *v.* Nelson, 83 Ill. 601; Cobb *v.* People, 84 Ill. 511.

[4] Wayne *v.* Caldwell (S. Dak.), S. C. 47 N. W. R. 547; Chipman *v.* Waterbury, 59 Conn. 496, S. C. 22 Atl. R. 289; Ohio River, etc., Co. *v.* Gibbens, 35 W. Va. 57, S. C. 12 S. E. R. 1093; The tribunal must be created by a *de facto* government, or it can not be regarded as a court. Williams *v.* Burfiy, 96 U. S. 176; Stevens *v.* Griffith, 111 U. S. 48; Hickman *v.* Jones, 9 Wall. 197; Dewing *v.* Perdicaries, 96 U. S. 193;

somewhat further by some of the courts, for their ruling is that parties can not agree that a term shall be held at a time different from that fixed by law,[1] but in our judgment some of the cases go too far inasmuch as they seem to hold that the proceedings are void if the term is convened or held at a time not designated by law, although there is color of right to hold it and the parties are present and proceed without objection.[2]

§ 143. **Courts—Definition.**—According to Sir Edward Coke, a court "is a place where justice is judicially administered." But this definition, we say with all deference to the great jurist, is not adequate nor strictly accurate.[3] Under the American system, however it may be elsewhere, the central element of a court is the judicial presence.[4] Our system of government is

Texas *v.* White, 7 Wall. 700; Lockhart *v.* Horn, 1 Woods, 628; Horn *v.* Lockhart, 17 Wall. 570; Nelson *v.* Boynton, 54 Ala. 368; Van Epps *v.* Walsh, 1 Woods, 598; The Nueva Anna, 6 Wheat. 193; Norton *v.* Shelby County, 118 U. S. 425; Hildreth's Heirs *v.* McIntires Devisee, 1 J. J. Marsh. 206, S. C. 19 Am. Dec. 61.

[1] Brumley *v.* State, 20 Ark. 78; Wightman *v.* Karsner, 20 Ala. 446; Greenwood *v.* Bradford, 128 Mass. 296.

[2] Where there is a time definitely fixed by statute for holding the term and there is no jurisdictional fact upon which the tribunal is required to give judgment before exercising authority there may be some reason for adjudging that the time fixed is the only one at which a valid term can be held, but where the right to hold the term is a question to be determined by the tribunal it is otherwise as we shall hereafter show.

[3] The definition of Bacon is more comprehensive. He says that a court is: "An incorporeal being which requires for its existence the presence of its judges, or a competent number of them, and a clerk or prothonotary, at or during which, and at a place where it is, by law, authorized to be held, and the performance of some public act indicative of the design to perform the functions of a court." Bacon's Abr. title "Court" A. See, also, Lawyers Tax Cases, 8 Heisk. (Tenn.) 650; Hall *v.* Marks, 34 Ill. 360; Mason *v.* Woerner, 18 Mo. 566; Hobart *v.* Hobart, 45 Iowa, 501; Henderson *v.* Beaton, 52 Texas, 29; Gold *v.* Vermont Central R. Co., 19 Vt. 478. As to what is a court of record, see 29 Central Law J. 67; 31 Central Law Journal, 86; Bellas *v.* McCarty, 10 Watts, 13; Hahn *v.* Kelly, 34 Cal. 391, 422; Wheaton *v.* Doolittle, 23 Wend. 377; *Ex parte* Gladhill, 8 Metcf. 168; Davis *v.* Hudson, 29 Minn. 27; Grignon's Lessee *v.* Astor, 2 How. (U. S.) 319.

[4] Lewis *v.* Hoboken, 42 N. J. L. 377. In the argument of Rothschild *v.* United States, 6 Ct. of Cl. 204, 212, counsel said: "The word 'court,' when used in legislation by a body of American legislators, has a well defined and unmistakable meaning. A 'court' signifies a member of the judiciary, which is one of the co-ordi-

a distributive one from the foundation upward, and the powers of sovereignty are distributed to different and independent governmental departments. The departments are independent in the true sense of the term and not simply co-ordinate.[1] In many of the States an officer in one of the departments is ineligible to office in any one of the other departments. The element of sovereignty known as the judicial is vested in an independent department of which the members, whatsoever their title, are judicial officers. It necessarily results, therefore, that the judicial presence, whatever be the rank or title of the officer or officers, is necessary to give the tribunal the character of a court. Under the common law system the judges represented the sovereign who was theoretically in court by his judges,[2] but under the American system the judges are actually invested with the elements of sovereignty distributed to them by the organic law. The principle that one department can not exercise sovereign functions distributed to another is given effect in many forms. Thus the legislature can not grant a new trial,[3] nor validate a judgment void because jurisdiction did not exist.[4] The effect of the diverging lines of decisions

nate branches of the government." This statement contains much of truth but something also of error.

[1] Turner *v.* Althaus, 6 Neb. 54; Greenough *v.* Greenough, 11 Pa. St. 489; Dash *v.* Van Kleeck, 7 Johns. 477, 489; Wright *v.* Defrees, 8 Ind. 298; Perkins *v.* Corbin, 45 Ala. 103. "If there is any one proposition immutably established," said Sawyer, J., "I had supposed it to be, that the judiciary department is absolutely independent of the other departments of government." *In re* Pacific Ry. Com., 32 Fed. R. 241, 267; People *v.* Keeler, 99 N. Y. 463, S. C. 52 Am. R. 49; State *v.* Noble, 118 Ind. 350, 355; See, generally, Decatur *v.* Paulding, 14 Peters, 497; Hilliard *v.* Connelly, 7 Ga. 172; State *v.* Adams, 44 Mo. 570; Burch *v.* Newbury, 10 N. Y. 374; Campbell *v.* The Board, 118 Ind. 119, 122.

[2] Blackst. Com., Ch. 7; Co. Litt. 260; Withers *v.* Patterson, 27 Texas, 491; Belcher *v.* Chambers, 53 Cal. 642; State *v.* Noble, 118 Ind. 350; Branson *v.* Studabaker, 133 Ind. 147, S. C. 33 N. E. R. 98.

[3] Lane *v.* Nelson, 79 Pa. St. 407; Norman *v.* Heist, 5 W. & S. 171; Menges *v.* Dentler, 9 Casey, 495; McDaniel *v.* Correll, 19 Ill. 226; Shonk *v.* Brown, 61 Pa. St. 320; Israel *v.* Arthur, 7 Col. 5; Denny *v.* Mattoon, 2 Allen, 361; Lewis *v.* Webb, 3 Me. 326.

[4] Lewis *v.* Webb, 3 Me. 326; Staniford *v.* Barry, 1 Aik. 314; Taylor *v.* Place, 4 R. I. 324; Young *v.* State Bank, 4 Ind. 301; Mayor *v.* Horn, 26 Md. 194; Weaver *v.* Lapsley, 43 Ala. 224; Sydnor *v.* Palmer, 32 Wis. 406; People *v.* Frisbie, 26 Cal. 135; Lawson *v.* Jeffries, 47 Miss. 686, S. C. 12 Am. R. 342; Forster *v.* Forster, 129 Mass.

upon the general subject is at last the same, for they meet upon the general proposition that the exercise of the judicial element of sovereignty must be by courts constituted according to the law of the land.

§ 144. **Source of judicial power.**—The ultimate source of judicial power is the constitution, since it is the organic law that creates and vests judicial authority.[1] The constitutions of many of the States define the jurisdiction of the courts, and where the constitution does this the legislature can not divert or alter the jurisdiction.[2] But the power to create judicial tribunals is, in general, conferred upon the legislature, and when courts are created pursuant to such constitutional warrant judicial powers are vested in them by the constitution.[3] Where the courts are created by the constitution, to that instrument reference must be made to ascertain the nature of the tribunal and the extent of its jurisdiction. Where the courts are created by statute, then, of course, a reference is to be made to the statute to ascertain their powers and jurisdiction.

§ 145. **Power to create courts.**—It is, under most American constitutions, within the general power of the legislative branch

559; Ratcliffe *v.* Anderson, 31 Gratt. 105, S. C. 31 Am. R. 716. Judgments can not be controlled by legislation. Griffin *v.* Cunningham, 20 Gratt. 31.

[1] Missouri Telegraph Co. *v.* First National Bank, 74 Ill. 217; King *v.* Hunter, 65 N. C. 603, S. C. 6 Am. R. 754; People *v.* Maynard, 14 Ill. 419; Hall *v.* Marks, 34 Ill. 358; People *v.* Keeler, 99 N. Y. 463, S. C. 52 Am. R. 49; State *v.* Noble, 118 Ind. 350; Shugart *v.* Miles, 125 Ind. 445, 447; Hawkins *v.* State, 125 Ind. 570; Kilbourne *v.* Thompson, 103 U. S. 168.

[2] Harris *v.* Vandeveer, 21 N. J. Equ. 424; *In re* Cleveland (N. J.), S. C. 17 Atl. R. 772; Hutkof *v.* Demorest, 103 N. Y. 377; State *v.* Gannaway, 16 Lea. (Tenn.) 124; Landers *v.* Staten Island, etc., Co., 53 N. Y. 450. See, generally, In the Matter of the Application of the Senate, 10 Minn. 78; Alexander *v.* Bennett, 60 N. Y. 204; Spencer Creek, etc., Co. *v.* Vallejo, 48 Cal. 70; In the Matter of the Senate, 9 Col. 623; Adams *v.* Town, 3 Cal. 247; Willis *v.* Farley, 24 Cal. 491, 499; People *v.* Richmond, 16 Col. 274, S. C. 26 Pac. R. 929.

[3] People *v.* Hunt, 41 Mich. 334; Covell *v.* Treasurer, 36 Mich. 332; Heath *v.* Kent, etc., 37 Mich. 372; State *v.* Judge, 14 La. Ann. 187; *Ex Parte* Harker, 49 Cal. 469. The power of the legislature over courts created by it is very comprehensive. Windsor *v.* McVeigh, 93 U. S. 277; McVeigh *v.* United States, 11 Wall. 267; *Ex parte* Lange, 18 Wall. 163; *In re* Cahill, 110 Pa. St. 167, S. C. 20 Atl. R. 414.

of the government to create courts of original jurisdiction.[1] But the general power is usually limited either by implication or by express provision. It has been held that the power to create a court can not be delegated to the municipalities of the State,[2] and this seems to us to be the true doctrine. The creation of a court of justice is the exercise of a high legislative power, and such a power is one that must be exercised by the legislature itself.[3]

§ 146. **Courts created by the constitution.**—Judicial tribunals created by the constitution are beyond the legislative power save only as the constitution confers authority, either by express words or necessary implication, over them. A constitutional tribunal, that is, one created or provided for by the constitution, is beyond legislative change. Thus, where supreme appellate jurisdiction is lodged in a designated tribunal, the legislature, although it may create inferior courts of appellate jurisdiction, can not make them of equal rank with the constitutional court of last resort.[4] So, where jurisdiction is vested by the constitution in a designated court, the legislature can not take the jurisdiction from it, nor can any part of that jurisdiction be rightfully conferred upon any other tribunal.[5] It has been held that where there is no constitutional authority

[1] *In re* Cahill, 110 Pa. St. 167, S. C. 20 Atl. R. 414; Corell *v.* Treasurer, 36 Mich. 332; State *v.* Mayor, 12 Rich. S. C. 480; State *v.* Helfrid, 2 Nott. & McC. 233; State *v.* Young, 3 Kan. 445; Shafer *v.* Mumma, 17 Md. 331; Hutchings *v.* Scott, 4 Hals. (N. J.) 218; Seale *v.* Mitchell, 5 Cal. 401.

[2] *In re* Cloherty, 2 Wash. 137, S. C. 27 Pac. R. 1064.

[3] Smith *v.* Strother, 68 Cal. 194; *In re* School Law Manual, 63 N. H. 574; Gould *v.* Raymond, 59 N. H. 260; *In re* Pacific Ry. Co., 32 Fed. R. 241; *Ex parte* Griffiths, 118 Ind. 83; Smith *v.* Rines, 2 Sumn. 338; Doe *v.* Considine, 6 Wall. 458; Endlich Interp. of Statutes, 22.

[4] Branson *v.* Studebaker, 133 Ind. 147, S. C. 33 N. E. R. 98; People *v.* Richmond, 16 Col. 274, S. C. 26 Pac. R. 929.

[5] People *v.* The Supervisors, 49 Hun, 476; People *v.* Nichols, 79 N. Y. 582; Alexander *v.* Bennett, 60 N. Y. 204; City *v.* The Mayor, 25 Hun, 612; Popfinger *v.* Yutte, 102 N. Y. 38; Hutkoff *v.* Demorest, 103 N. Y. 377; Mussen *v.* Ausable Granite Works, 63 Hun, 367; *Ex parte* Ginnochio, 30 Tex. App. 584, S. C., Ginnochio *v.* State, 18 S. W. R. 82. See, generally, Jones *v.* Reed, 3 Wash. 57, S. C. 27 Pac. R. 1067. See Perkins *v.* Corbin, 45 Ala. 103; Bors *v.* Preston, 111 U. S. 252; Davis *v.* Packard, 7 Pet. 275; Ames *v.* Kansas, 111 U. S. 449.

to establish a court, the persons who claim to be judges of it are not even judges *de facto*.[1] These decisions proceed upon the ground that there must be a *de jure* office or there can be no *de facto* officer, but these decisions are opposed by well reasoned cases.[2]

§ 147. **Creation of courts—Constitutional limitations.**—The legislative power, comprehensive as it is, is not unlimited. Courts may be created by the legislature where there is either express or implied authority conferred by the constitution; but, as the judicial power is one of the principal elements of sovereignty, it can not, as we believe, be justly held that the legislative departments may create such judicial tribunals as it pleases. A general grant of power to create courts invests the legislature with a wide discretion, and where a discretion is vested in the legislature it is master of that discretion.[3] In cases where a grant or delegation of power is made to the legislature to establish courts, it may regulate at discretion the jurisdiction and procedure in such tribunals, provided, of course, no constitutional limitation is violated. In many of the States the constitution prohibits the enactment of special laws regulating the practice in courts of justice, and in those States the statute must be general and of uniform operation throughout the State.[4]

[1] Norton *v.* Shelby County, 118 U. S. 425; Hildreth's Heirs *v.* McIntyre, 1 J. J. Marsh. 206, 19 Am. Dec. 61; People *v.* Brown, 49 Barb. 9, 12; People *v.* Terry, 5 N. Y. St. 120, 123; People *v.* Toal, 85 Cal. 333, S. C. 24 Pac. R. 603; Walcott *v.* Wells (Nev.), 24 Pac. R. 367, 370, 21 Nev. —.

[2] Burt *v.* Winona, etc., Co., 31 Minn. 472, S. C. 18 N. W. R. 285; Comstock *v.* Tracey, 46 Fed. R. 162, 168; Coyle *v.* Commonwealth, 104 Pa. St. 117.

[3] Legal Tender Cases, 12 Wall. 457, 561; License Cases, 5 How. (U. S.) 504; Hancock *v.* Yaden, 121 Ind. 366; State *v.* Haworth, 122 Ind. 462, 467; Hedderich *v.* State, 101 Ind. 564. Where the legislature has plenary power over a subject, it is the sole judge of the modes and means best adapted to accomplish the object sought to be attained. Legal Tender Cases, 110 U. S. 421; State *v.* Kolsem, 130 Ind. 434, 442; Jamieson *v.* Indiana Natural Gas Co., 128 Ind. 555, 561; Carr *v.* State, 127 Ind. 204, 208; Cooley's Const. Lim. (4th ed.) 129; *Ibid*, 392.

[4] Chicago, etc., Co. *v.* Moss, 60 Miss. 641; The South, etc., Ry. Co. *v.* Morris, 65 Ala. 193; Madison, etc., Co. *v.* Whiteneck, 8 Ind. 217; Indiana Central Ry. Co. *v.* Gapen, 10 Ind. 292; Mitchell *v.* McCorkle, 69 Ind. 184;

§ 148. **Legislative judgment—Collateral attacks.**—In close harmony with the rule that where a discretion is vested in the legislature it has a choice of modes and means, is the rule that where the legislature is authorized to determine whether a state of facts exists authorizing the exercise of power, its judgment that such a state of facts does exist is conclusive.[1] This doctrine is, indeed, nothing more than the just application of the general principle that where a tribunal must determine that facts essential to its exercise of authority exist, its decision is final. It is evident that if any other rule were recognized the consistency of the law would be destroyed and conflict result, with no power capable of effectively and finally ending it, since it might often happen that one department would make one decision upon certain facts, and another department make a radically different decision upon the same facts. Logically the department upon which is devolved the duty of deciding before action is taken by it, must necessarily have the power to fully and finally decide, otherwise the decision would be an idle ceremony. In accordance with the general doctrine we have stated, it has been held that where the legislature has determined that notice required by the constitution to be given before enacting a special or local law has been given, the courts will not inter-

Durkee *v.* City of Janesville, 28 Wis. 464; Bull *v.* Conroe, 13 Wis. 260; Holden *v.* James, 11 Mass. 396; Lewis *v.* Webb, 3 Greenl. 326; Budd *v.* State, 3 Humph. 483; Wally's Heirs *v.* Kennedy, 2 Yerg. 554; State Bank *v.* Cooper, 2 Yerg. 599; Tate *v.* Bell, 4 Yerg. 202; Officer *v.* Young, 5 Yerg. 320.

[1] This general doctrine is well illustrated by the many cases which hold that where the constitution commits to the legislature the power of deciding whether an act can be made general, its decision is final and unimpeachable. Edmonds *v.* Herbrandson, 2 N. Dak. 270, S. C. 50 N. W. R. 970; Brown *v.* City of Denver, 7 Col. 305; Carpenter *v.* People, 8 Col. 116; State *v.* County Court of Boone, 50 Mo. 317; State *v.* County Court of New Madrid, 51 Mo. 82; Hall *v.* Bray, 51 Mo. 288; State *v.* Hitchcock, 1 Kan. 178; Beach *v.* Leahy, 11 Kan. 23; Davis *v.* Gaines, 48 Ark. 370; Gentile *v.* State, 29 Ind. 409; State *v.* Hockett, 29 Ind. 302; State *v.* Boone, 30 Ind. 225; Longworth *v.* The Common Council, etc., 32 Ind. 322; Clem *v.* State, 33 Ind. 418; Marks *v.* Trustees, 37 Ind. 155; State *v.* Tucker, 46 Ind. 355; Vickery *v.* Chase, 50 Ind. 461; Kelly *v.* State, 92 Ind. 236; Johnson *v.* The Board, 107 Ind. 15, 22; City of Evansville *v.* State, 118 Ind. 426, 433; State *v.* Kolsem, 130 Ind. 434. The doctrine stated can, of course, have no application where there is a prohibition against the enactment of special laws.

fere with that decision, but will regard it as final and conclusive.[1] The doctrine we have outlined leads, with logical certainty and precision, to the conclusion that where the legislature determines, before enacting a law establishing a court, such facts as are essential to the exercise of the power, its decision can not be successfully assailed by a collateral attack. In a recent case the rule we have stated was given practical effect.[2]

[1] Stockton *v.* Powell (Fla.),15 Lawy. R. Anno. 42, 50. In the course of the opinion the court said:

"The obligation resting upon the legislative department of the government to conform to the requirements of this provision of the constitution, and to the statute law enforcing the same, can not be questioned. No local or special bill within the purview of the proviso of this section of the organic law should be passed except and until notice of the intention to apply for the passage of the same has been given in the manner contemplated by the constitution and authorized legislation thereunder, nor is it ever to be presumed that any branch of the legislative department will give its sanction to any such local or special legislation until legal and satisfactory evidence that such notice has been published shall be 'established in the legislature.' This feature of the fundamental law is as binding upon the consciences of those intrusted with the legislative function of the government as is any other part of the constitution, but this truth is by no means conclusive that power has been given the judiciary to sit in judgment upon the performance of the duty thus imposed upon a co-ordinate branch of the government. No such power has been given to the judiciary. To decide whether or not the notice has been given, is a legislative function, not only in its nature, but as a result of the provision that 'the evidence that such notice has been published shall be established in the legislature before the bill shall be passed,' which provision, as excluding any inference in the matter by the judiciary, supplements the inhibition pronounced by the second article of the constitution that no person properly belonging to one of the departments of the government shall exercise any powers appertaining to either of the others, except in cases expressly provided for by that instrument." The court cited in support of its conclusion the following cases: Lusher *v.* Scites, 4 W. Va. 11; Rumsey *v.* People, 19 N. Y. 41; De Camp *v.* Eveland, 19 Barb. 81; Advisory Opinion Matter of Impeachment, 14 Fla. 289; People *v.* Hulburt, 24 Mich. 44, S. C. 9 Am. R. 103; Day *v.* Stetson, 8 Me. 365; McClinch *v.* Sturgis, 72 Me. 288.

[2] In the case of State *v.* Wiley (Mo.), 19 S. W. R. 197, the court's decision, as the reporter's head-note shows, was this: "Where the legislature, by an act constitutional on its face, creates a criminal court for a county, it will be conclusively presumed, in a collateral attack upon the constitutionality of the act, that the county had a population of over 50,000 inhabitants, and that the act did not violate const. art. 6, § 31, prohibiting the legislature from establishing a criminal court in any county not having such population."

In the course of the opinion it was said: "It was the duty and right of the legislature to determine before

§ 149. **Appellate tribunals.**—A court of exclusive appellate jurisdiction is one of review, and its judgments are given upon decisions made by subordinate tribunals or trial courts.[1] The theory is that a ruling or decision has been made by a tribunal of original jurisdiction, and that the questions presented are not original ones. It is in general true that appellate tribunals proper, that is courts of last resort, act only upon the record and decide only questions of law. That there are exceptions to this general rule we know, but we do not regard it necessary to treat of those exceptions since we do not propose to do more than give a rough outline of the different classes of courts. Original jurisdiction may, where it is not

passing the act, to inquire and ascertain as to number of people in Greene county. A proper respect for a coordinate branch of the government compels us to presume that they made proper examination and found from the facts that they were not infringing upon the constitution. The court was accordingly established, and the practical question now arises, must this court and its officers, every time an indictment is found and a prisoner put on trial, submit, as a preliminary question, to an investigation of the fact of the existence of 50,000 inhabitants in Greene county on April 26, 1889? The question was answered in State *v.* Rich, 20 Mo. 393. Judge Leonard, speaking for the court, said: 'It would indeed be impracticable to act upon any such principle. If, whenever any act done under the authority of the law came in question collaterally, the constitutionality of the law could be contested, then the trial of the main issue must necessarily be delayed until the preliminary fact upon which the validity of the contested legislative act depended should be first tried and determined upon testimony, which being different in different cases, might involve the absurdity of deciding the law constitutional one day and unconstitutional the next. But we need not press these things further. The result is manifest. All such inquiries must be excluded whenever they come up collaterally, and the county, its courts and officers, must be treated as things existing in fact, the lawfulness of which can not be questioned unless in a direct proceeding for that purpose.'

"So, we think it was clearly competent for the legislature to make its own inquiries as to the population of Greene county when it enacted the law creating this court; and until the State, in some appropriate direct proceeding, shall question the constitutionality of said act, it will be assumed that said county had the requisite population, and no such inquiry will be permitted in these collateral proceedings. State *v.* Daniels, 66 Mo. 192; State *v.* Boone Co. Ct., 50 Mo. 317."

[1] Story's Const. Law, § 1761; Auditor *v.* Atchison, etc., Co., 6 Kan. 500; Board *v.* Newman, 35 Ind. 10; Crane *v.* Farmer (Col.), 23 Pac. R. 455; Planters Ins. Co. *v.* Cramer, 47 Miss. 209; Marbury *v.* Madison, 1 Cranch, 137; Weston *v.* City Council, 2 Peters, 449; Benson *v.* Christian, 129 Ind. 535.

forbidden by the organic law, be given to appellate tribunals by statute,[1] but this can not, it is barely necessary to mention, be done, where the constitution expressly or impliedly prohibits it.[2] It is not necessary that the constitution should by negative words declare that original jurisdiction can not be conferred upon an appellate tribunal, for where the object in establishing the court is manifested by the constitution and that object appears to be the establishment of an appellate tribunal the legislature can not transform it into a court of original jurisdiction. So, where the constitution by affirmative words declares what original jurisdiction an appellate court shall possess, the legislature can not confer any other upon it.[3] The court of last resort established by the constitution possesses the element of sovereignty known as the judicial in its highest form, and is the ultimate arbiter in all cases where the controversy is of a purely judicial nature.[4] It is evident that in each of the three great departments of government, the executive, legislative and judicial, there must be some supreme power, otherwise there would be unending confusion and deplorable conflict. It is, of course, within the power of the people —the source of all governmental power—to divide the element of sovereignty distributed to the judicial department, but unless the words of the constitution clearly indicate a purpose to divide the highest judicial power it must be held that it resides, unified and solidified, in the supreme judicial tribunal of the State.

[1] Osborn *v.* Bank, 9 Wheat. 738; *Ex parte* Henderson, 6 Fla. 279; Hawes *v.* People, 124 Ill. 560; Piqua Bank *v.* Knoup, 6 Ohio, 342.

[2] Hubbell *v.* McCourt, 44 Wis. 584.

[3] Marbury *v.* Madison, 1 Cranch, 137. In speaking of the case referred to, Judge Curtis said: "You will find on reading that case—it is one of the great judgments of Chief Justice Marshall, not upon this point only, but covering a variety of subjects—you will find on reading that case, that the court came to the conclusion that the affirmative words that the Supreme Court shall possess this jurisdiction naturally and properly included a negative—that they should not possess any other, and the reasoning by which that conclusion was arrived at is perfectly satisfactory." Curtis on Jurisdiction of the United States Courts, 8.

[4] Branson *v.* Studebaker, 133 Ind.147, S. C. 33 N. E. R. 98.

§ 150. **Classes of courts—Generally.**—In many books and in many judicial opinions courts of original jurisdiction are classified as courts of superior general jurisdiction and courts of limited inferior jurisdiction. But this classification, if one may judge by the confusion it has produced, is not a logical nor a scientific one. It is true, in a general sense, that all American courts, Federal and State, are courts of limited jurisdiction, since all have their authority defined, and, in a measure, limited, by statutes or constitutions, so that it will not do to say that because of this fact these courts are not superior courts of general jurisdiction.[1] In this country, however it may be elsewhere, courts do not grow into existence and vigor by custom or usage, although we turn to the unwritten law to ascertain their incidental and implied powers. On the other hand courts created by statute with a very narrow jurisdiction are vested with plenary authority over a designated class of cases. Thus, in highway cases, boards of supervisors or commissioners are vested with exclusive original jurisdiction, and upon logical principles it must be assumed that as to such a subject they are not tribunals of limited jurisdiction. If we proceed logically, and not arbitrarily, we must conclude that a court vested with exclusive authority over a subject is not a court of special limited jurisdiction as to that subject, but the weight of authority requires a different conclusion, and we must accept the classification, abitrary and illogical as it is, that the decisions establish. It is true that there are tribunals which are in the strict sense special statutory ones, as, for instance, commissioners to assess benefits and damages in a condemnation case, but such tribunals are not courts in a just sense. If it were not presumptuous to deny what so many decisions affirm we should be

[1] We say that the powers of a court are in a measure limited and defined by statutes for the reason that we do not believe that courts owe all their powers to written laws. To concede that they do would lead to the conclusion that all governmental power is unified and vested in the legislative department. To affirm this conclusion would involve a denial of the fundamental doctrine of free government, since it would be equivalent to the annihilation of the doctrine that governmental powers reside in different departments.

inclined to assert that where exclusive original jurisdiction is conferred upon a court, no matter what its rank, the court is as to the subjects over which it has such authority one of general jurisdiction.[1] It is difficult for us to conceive how a court with exclusive original jurisdiction can be anything else than one of general jurisdiction over the subject placed solely under its authority, since that authority can be shared by no other tribunal and hence must be general.[2]

[1] The doctrine we regard as the correct one is practically sanctioned, although not explicitly stated, by some of the courts. Thomas *v.* Churchill, 84 Me. 446, S. C. 24 Atl. R. 899; Cyr *v.* Dufour, 62 Me. 20; Hume *v.* Conduitt, 76 Ind. 598; Turner *v.* Conkey, 132 Ind. 248. This doctrine is impliedly recognized in *habeas corpus* proceedings. Cortes *v.* Jacobus, 136 U. S. 330; Stevens *v.* Fuller, 136 U. S. 468; People *v.* Liscomb, 60 N. Y. 559, S. C. 19 Am. R. 211; Willis *v.* Bayles, 105 Ind. 363; *Ex parte* Miller, 82 Cal. 454, S. C. 22 Pac. Rep. 1113; People *v.* St. Dominick, 34 Hun, 463; Bennac *v.* People, 4 Barb. 31. See, generally, Jackson *v.* Smith, 120 Ind. 520; Alexander *v.* Gill, 120 Ind. 485, S. C. 30 N. E. R. 525; Chicago, etc., Co. *v.* Sutton, 130 Ind. 405, S. C. 30 N. E. R. 291; State *v.* Wolever, 127 Ind. 306; McCoy *v.* Able, 131 Ind. 417; Merriman *v.* Morgan, 7 Ore. 68.

[2] In Hahn *v.* Kelly, 34 Cal. 391, S. C. 94 Am. Dec. 742, the court in speaking of courts of inferior and limited jurisdiction said *inter alia:* "The doctrine when pushed to its ultimate conclusion would abrogate the rule in this State and dwarf all our courts to the grade of inferior courts at common law. The jurisdiction of all our courts is special and limited, as defined by the constitution, and they do not proceed according to the course of the common law, but according to the course of the practice act, which prescribes in almost every particular a course very different from the common law. Some of its paths are not the same, but like the common law they are the exception and not the rule. Are all our courts, therefore, inferior in the sense of the rule in question? If this is putting it too broadly, do our courts when they undertake to foreclose a mechanic's lien under the statute which regulates that matter and which in its purpose and methods is an entire stranger to the common law, become inferior courts? When engaged in making partition of lands, as provided in the practice act, do they become inferior courts so far as the proceedings relate to persons not personally served? Is this also true in respect to proceedings under the insolvent law?

Sometimes in the same action they proceed according to the rules of common law, or rules which are like those of the common law, and also according to the statute. Are they, therefore, superior courts as to one question and inferior courts as to another in the same action? The federal courts are peculiarly special and limited in respect to their jurisdiction. Are they, therefore, all inferior within the meaning of the law? Can nothing be presumed in favor of their jurisdiction? There can be no two opinions as to how all these questions are

§ 151. **Courts of superior and inferior jurisdiction.**—When we come to consider the question of jurisdiction we shall see that the distinction between courts of superior and courts of inferior jurisdiction, arbitrary and foundationless as we venture to say it is under our system, is an important one, and, because of its importance, it is necessary to keep in the beaten track and give recognition to the fancied distinction. It is exceedingly difficult, if, indeed, not impossible, to convey an adequate or accurate conception of the difference between superior and inferior courts, notwithstanding the fact that many decisions proceed upon the assumption that there is a radical difference.[1] It will not do, as is evident from what we have

to be answered. *Ex parte* Watkins, 3 Pet. 193; Coit *v.* Haven, 30 Conn. 190, S. C. 79 Am. Dec. 244.

The reason sometimes given for the classification of courts into superior and inferior is that the one proceeds according to the course of the common law and the other according to the statute, but this reason is not a valid one. It is not valid because, as shown in the text and in the extract taken from the opinion in Hahn *v.* Kelly, all American courts proceed partly under unwritten laws. It is shown to be invalid when it is brought to mind that all judicial tribunals ranking as courts proceed in great part according to the unwritten law established in this age by judicial decisions which assume to be founded on the common law.

[1] A thoughtful and judicious writer says: "The use of the words 'superior' and 'inferior,' however apt they may have once been, are less so at this time and place, and their duties in view of our system and mode of procedure would be better performed by the terms 'courts of record' and courts and tribunals not of record." Freeman on Judgments (2d. ed.), § 122. Judge Van Fleet, after a careful study of the cases, thus states the modern rule: "On principle, it seems to me to be self-evident that, if the court has unlimited jurisdiction over a class of cases, its jurisdiction in such matters is general; and that when its record shows such a case, all presumptions are in its favor, and that silence is conclusive. According to this idea the proceedings of county courts and county commissioners or supervisors in respect to county matters, boards for the assessment or revision of taxes, and justices of the peace in actions between landlord and tenant for the possession of land, being unlimited and generally exclusive, should be classed with those of superior courts, and all intendments made in their favor. When any tribunal is given unlimited power over a matter, that is a legislative assertion that it is competent to adjudicate upon, and rightfully settle, all questions that may arise concerning it. No stronger declaration can be made in respect to any tribunal. When the record shows that such a matter has been adjudicated, no court has ever yet attempted to give any reason why all intendments and presumptions should not be made in its favor, and I doubt if any court ever will. I get this idea

said in the preceding paragraph, to characterize all courts which derive their being and authority from the written laws as courts of inferior jurisdiction. Such a conclusion, we may add, would involve the absurdity of declaring that all American courts are inferior tribunals,[1] and it would, also, require the impeachment of many well considered cases.[2] The confusion in which the general subject is involved is further manifested in the difficulty of determining how far a court of any rank, no matter how exalted, may go without so far transcending its powers as to render its judgments void. Some of the decisions go to extreme lengths upon this subject, and hold that where the rules of procedure are not obeyed the judgment is invalid. This extreme doctrine we believe to be unsound. We have no doubt, however, that there may be cases where a judgment is void because not one that the court had power to render in the

from the cases and not from my own thoughts." Collateral Attack, pp. 874, 875.

[1] Starting from an erroneous premise one of the courts of last resort has held that it is itself a court of inferior jurisdiction. Linn *v.* Kyle, 1 Walker, (Miss.), 315. In that case it was said, "By a uniform train of decisions in this tribunal from its earliest establishment to the present time it has been held to be a court of limited and not general jurisdiction." The general conclusion reached is thus broadly stated: "This, then, is a court of limited jurisdiction, in no case can its jurisdiction exist, unless it appear." Few will concur in this conclusion but if the validity of the premises be granted the deduction is logical and correct. The only tenable position is, as it seems to us, to deny the premises, but that is somewhat hazardous, since it brings one into war with the adjudged cases. Kempe *v.* Kennedy, 5 Cranch, 173; Kennedy *v.* Georgia, etc., Bank, 8 How. U. S. 611; Busteed *v.* Parsons, 54 Ala. 393, S. C. 25 Am. R. 688; St. Albans *v.* Bush, 4 Vt. 58, S. C. 23 Am. Dec. 246; Vose *v.* Morton, 4 Cush. 27, S. C. 50 Am. Dec. 750.

[2] Turner *v.* Malone, 24 S. Car. 398; Angell *v.* Angell, 14 R. I. 541; Miller *v.* United States, 11 Wall. 268; Reed *v.* Vaughan, 15 Mo. 137, S. C. 55 Am. Dec. 133; Musselman's Appeal, 65 Pa. St. 480; Lex's Appeal, 97 Pa. St. 289; Veach *v.* Rice, 131 U. S. 293; Foot *v.* Stevens, 17 Wend. 483; Harvey *v.* Tyler, 2 Wall. 328; Agricultural Co. *v.* Barnard, 96 N. Y. 531; Sims *v.* Gay, 109 Ind. 501; Powell *v.* North, 3 Ind. 392; Doe *v.* Smith, 1 Ind. 451; Braly *v.* Breese, 51 Cal. 447; Shroyer *v.* Richmond, 16 Ohio St. 455; Doolittle *v.* Holton, 28 Vt. 819, S. C. 67 Am. Dec. 745; Dayton *v.* Mintzer, 22 Minn. 393; Osborne *v.* Graham, 30 Ark. 67; Apel *v.* Kelsey, 52 Ark. 341, S. C. 20 Am. St. R. 183; Johnson *v.* Beazley, 65 Mo. 250, S. C. 27 Am. R. 276; Camden *v.* Plain, 91 Mo. 117; Rowden *v.* Brown, 91 Mo. 429; Luco *v.* Commercial Bank, 70 Cal. 339.

particular instance.[1] We suppose that no one would doubt that if a court, no matter how broad the field of its power, should imprison a man where there was nothing more than a simple action of debt the judgment would be void, but we suppose it to be equally clear that if a court of any rank, no matter how low, should render a judgment not authorized by the rules of procedure its judgment would not be void although it would be erroneous. It seems clear to us that some of the cases place entirely too much stress upon the doctrine of limited power and are thus carried into serious error, but, on the other hand, it is true that there may be cases where the judgment is so far beyond the authority existing in the particular instances that it may be void.[2] Such cases, however, are very rare and are of extraordinary character. But the doctrine of limited power is one, which, as we believe, can not be extended without producing evil and confusion.[3]

[1] Thus in Anthony *v.* Kasey, 83 Va. 338, S. C. 5 Am. St. R. 277, it was held that a judgment rendered against a surety on a bond of a purchaser at a sheriff's sale is void if rendered against him upon a rule issued against him and his principal because of the latter's default. In the course of the opinion, it was said: "Now, it is essential to the validity of a judgment or decree, that the court rendering it shall have jurisdiction of both the subject-matter and the parties, nor is this all, for both of these essentials may exist and still the judgment or decree be void, because the judgment was not such as the court had power to render, or because the mode of procedure was such as it might not lawfully adopt." We venture to suggest that the language employed is too broad, although it is substantially borrowed from the opinion in the case of Windsor *v.* McVeigh, 93 U. S. 282, 283. If a departure from rules of procedure makes the proceedings *coram non judice* and void, then, a long line of decisions is erroneous, and the distinction between collateral and direct attacks unsubstantial and illogical.

[2] Windsor *v.* McVeigh, 93 U. S. 282. See, also, United States *v.* Winchester, 99 U. S. 372; Pelham *v.* Rose, 9 Wall. 103; The confiscation Cases, 20 Wall. 92; Strosser *v.* City of Fort Wayne, 100 Ind. 443; Henry *v.* Carson, 96 Ind. 412, 444. In the case last cited the doctrine is, we think it safe to say, somewhat too broadly stated.

[3] The general question is ably discussed by Judge Brewer, now Mr. Justice Brewer, in Cooke *v.* Bangs, 31 Fed. Rep. 640. The question related to the authority of a justice of the peace, and in speaking of a judgment of that officer it was said: "If he assumes to try a man for manslaughter, and sentences him to the penitentiary, he is proceeding in a direction which is entirely outside of the scope of his jurisdiction. On the

§ 152. **Courts of superior general jurisdiction.**—It is quite difficult, if not impossible, to give a definition of a court of superior general jurisdiction, notwithstanding the fact that the decided cases assert that there is a distinction between courts of superior and courts of inferior jurisdiction, and that two great classes do exist. The distinction is recognized, but there is no successful attempt to give an accurate definition, so far as we can discover, of a court of general jurisdiction. Although many of the courts take it for granted that courts of general and inferior jurisdiction exist, and that there is a wide difference between the two classes, no court has given a satisfactory definition or description of either class.[1] It is not, perhaps,

other hand, he may have jurisdiction over assaults and batteries and does in most States. Suppose he proceeds to try a man charged with assault and battery, and suppose, in fact, the assault and battery was committed outside of the county over which his jurisdiction extends; then, although his judgment would be erroneous, and in excess of his jurisdiction, yet, having jurisdiction of the subject-matter of assault and battery, and of the person of the defendant, it lies with him to determine whether such particular assault and battery comes within his jurisdiction; and his determination, though erroneous, ought not to subject him to an action for damages. He has jurisdiction of the subject-matter and it is for him to determine whether the case is within his jurisdiction. He has the right to determine the question, and although it may be a case which does not come within the limitation of his jurisdiction, and although he may have exceeded his authority, yet he had the power and the right to determine whether or no he had that jurisdiction, and it can not be said to be a case wherein the entire subject-matter was outside of his jurisdiction

[1] Mr. Wells quotes from the opinion of the court delivered in the case of Harvey *v.* Tyler, 2 Wall. 328, the statement that "The line between the two classes of cases may not be very well defined nor easily ascertained at all times," and quotes, also, other portions of the opinion, from which it appears, we venture to say, with all possible deference for that high tribunal, that the court was sorely confused and perplexed. The comment of the author referred to is this: "It is a legitimate conclusion, from the preceding quotation, that the same court may be one of general jurisdiction in regard to some subjects, and of special in regard to others, or superior or inferior at once, from the nature of the subject submitted, and the mode of determining them respectively." Wells on Jurisdiction, p. 25. We can not concur in the views of the author, for it seems to us that if a court has jurisdiction of a general class of cases, or of a general subject, its jurisdiction is general, and not special. It may be true that the mode of procedure is a statutory one, and yet the court may be one of general jurisdiction, so that it will not do to fix the rank of the court because its authority is defined by statute or its procedure is statutory.

very difficult to conclude that some courts are of general jurisdiction in States where the statute makes their authority a wide and comprehensive one, but this by no means justifies the conclusion that a definition can be framed that will be accurate or adequate.[1] In some of the States there is no great difficulty in determining that the court of common pleas is one of general jurisdiction, as, for instance, in Ohio, or, as in Indiana, that the circuit court is one of that class, or, as in Iowa, that the district court is one of general jurisdiction. It will not do to assert that courts from which appeals lie are inferior, since that would lower all trial courts to courts of limited inferior jurisdiction, and no well considered case warrants such a conclusion.[2] A court may be one of the widest possible general

[1] Mr. Brown justly notes the difficulty of discriminating between courts of general jurisdiction and courts of inferior jurisdiction. In one place he says: "A court of general jurisdiction is one that takes cognizance of all causes, civil or criminal, of a particular nature, defined and provided by law. Absolute, original, general jurisdiction over all subjects out of which an action or prosecution may arise is not given to one court." Brown on Jurisdiction, § 19. It seems to us that this statement requires some qualification, for we believe that it is not necessary to give to a judicial tribunal the character of a court of general jurisdiction that it should have jurisdiction "of all causes, civil or criminal, of a particular nature." We think that the learned author states the true doctrine when he says: "Where the jurisdiction of the court is general over any class of actions, it can not be regarded as having only inferior jurisdiction. Therefore the rule is that, where a court is given complete or general jurisdiction over any class of actions, if it be a court of record, it is not a court of inferior jurisdiction, although its jurisdiction is limited." *Ibid*, § 20. In support of the text is cited the case of Pursley *v.* Hayes, 22 Iowa, 11, wherein the court refers to Perrine *v.* Farr, 2 Zabr. (N. J.) 356, and other cases.

[2] In Kempe *v.* Kennedy, 5 Cr. 173, 185, Chief Justice Marshall said: "All courts from which an appeal lies are inferior courts, in relation to the superior court before which their judgment may be carried; but they are not, therefore, inferior courts, in the technical sense of these words. They apply to courts of a special limited jurisdiction, which are erected on such principles, that their judgments, taken alone, are entirely disregarded, and the proceedings must show their jurisdiction. The courts of the United States are all of limited jurisdiction, and their proceedings are erroneous if jurisdiction be not shown upon them. Judgments rendered in such cases may certainly be reversed, but this court is not prepared to say that they are absolute nullities, which may be totally disregarded." It is evident that the great Chief Justice saw the difficulty which resulted from the doctrine that all American courts are courts of limited jurisdiction, and, while not will-

original jurisdiction, and yet its judgments be subject to review, revision or reversal by the appellate tribunals of the State or nation.

§ 153. **Courts of limited jurisdiction.**—We think that it may be safely assumed that all American courts, from the highest to the lowest, are, in a restricted sense, courts of limited jurisdiction,[1] but they are not courts of limited jurisdiction in the sense in which that term is often used. It is true of courts existing as creations or growths of the common law, as well as of courts created by statutes or by constitutions, that there are limitations upon their jurisdiction. Courts existing without express statutory or constitutional warrant are bound by rules and precedents [2] which have force as great as that of written laws, and on the other hand, statutory or constitutional courts have inherent powers. It is by no means necessary that the powers of any tribunal should be specifically enumerated, for the creation of a court carries by implication the authority and duty essential to its existence and necessary to enable it to accomplish the objects for which it was created. It can not be concluded that a court is one of inferior jurisdiction because of the fact that its jurisdiction and procedure are governed by

ing to deny the doctrine, was unwilling to carry it to its logical consequences. The later decisions very clearly declare that the Federal courts are not inferior courts within the meaning attached to these words by the common law. McCormick *v.* Sullivant, 10 Wheat. 192; *Ex parte* Watkins, 3 Pet. 193; United States Bank *v.* Moss, 6 How. 31; Kennedy *v.* Georgia State Bank, 8 How. 586; Huff *v.* Hutchinson, 14 How. 586; Galpin *v.* Page, 18 Wall. 350, 365; Cuddy, Petitioner, 131 U. S. 280, 285.

[1] "All courts, even the highest, are more or less limited in their jurisdiction; they are limited to particular classes of actions, such as civil or criminal; or to particular modes of administering relief, such as legal or equitable, or to transactions of a special character, such as arise on navigable waters or relate to the disposition of estates, or to the use of particular process in the enforcement of their judgments." By the court in Windsor *v.* McVeigh, 93 U. S. 274.

[2] Even courts of chancery with their judge created jurisdiction and modes of procedure are courts of limited jurisdiction, for rules and precedents control them. Gee *v.* Pritchard, 2 Swanst. 402, 414; Cowper *v.* Cowper, 2 P. Williams, 720, 723; Manning *v.* Manning, 1 Johns. Ch. 530; King *v.* Baldwin, 2 Johns. Ch. 527; Shotwell *v.* Smith, 20 N. J. Eq. 79; Segar *v.* Parrish, 20 Gratt. 672; Pratt *v.* Pond, 5 Allen, 59; Cannon *v.* McNab, 48 Ala. 99.

law, for the assertion of such a conclusion is an affirmation that there are no courts of superior jurisdiction. It is, therefore, necessary to obtain some other ground upon which to base a distinction between inferior and superior tribunals, and, for our part, we are at a loss to find any valid ground for the distinction, notwithstanding the many decisions which impliedly recognize its existence. We can plainly see solid ground upon which to rest a distinction between special statutory tribunals and courts, but we can not see a reason for discriminating between classes of courts established as such, given a permanent existence and invested with original or appellate jurisdiction over a general class of cases or over many classes of cases.

§ 154. **The test for determining the rank of a court.**—It is with hesitation that we venture to suggest a test for determining whether a court is one of general original jurisdiction or one of inferior and limited jurisdiction, for we know quite well that the test which seems to us the correct one is not recognized by the majority of the courts. But, while we know that many cases oppose our opinion, we are sure that the express decisions in many cases and the reasoning in more, yield ample support to our views, so that we are not simply asserting our own unsupported conclusions.[1] The test we suggest is

[1] Chicago, etc., Co. *v.* Sutton, 130 Ind. 405; Jackson *v.* Smith, 120 Ind. 520; State *v.* Wolever, 127 Ind. 306; Turner *v.* Conkey, 132 Ind. 248, S. C. 31 N. E. R. 777; Alexander *v.* Gill, 130 Ind. 485, 30 N. E. R. 525; Otis *v.* De Boer, 116 Ind. 531; Tallman *v.* McCarty, 11 Wis. 420; Colton *v.* Beardsley, 38 Barb. 29; Otis *v.* Rio Grande, 1 Woods, 279, 282. This doctrine is asserted, although generally only tacitly, in the numerous cases where courts sustain the judgment of committing magistrates where attacks are made upon them in applications for *habeas corpus*. Oteiza *v.* Jacobus, 136 U. S. 330; Stevens *v.* Fuller, 136 U. S. 468; People *v.* St. Dominick, 34 Hun, 463; Bennac *v.* People, 4 Barb. 31; McLaughlin *v.* Etchison, 127 Ind. 474, S. C. 27 N. E. R. 152.

We think it clear that the cases which hold that where there is jurisdiction over a general class of cases the court as to the subject is one of general jurisdiction declare the true rule. State *v.* Kansas Court of Appeals, 104 Mo. 419, S. C. 16 S. W. R. 415. See Posthlewaite *v.* Ghiselin, 97 Mo. 420. See, generally, McCoy *v.* Able, 131 Ind. 417, S. C. 30 N. E. R. 528; Hume *v.* Conduitt, 76 Ind. 598; Brown *v.* Eaton, 98 Ind. 591; Perkins *v.* Haywood, 132 Ind. 95, S. C. 31 N. E. R. 670.

this: Has the particular tribunal permanent existence, has it authority over a general subject, is it authorized to keep a record and will its judgments support a plea of former adjudication? If the court has a permanent existence it is in that respect the equal of the highest; if it has original jurisdiction over a general subject in that particular its authority is not more limited than that of other judicial tribunals; if it is authorized to keep a record it is as much a court of record as any tribunal can be; if its judgments will support a plea of former adjudication they are in this regard as powerful and influential as those of any other court, no matter how high its position or great its dignity. The judgment of a board of county commissioners will support a plea of former adjudication.[1] The judgment of any permanent tribunal upon facts which it is required to decide upon before assuming jurisdiction is conclusive as against a collateral attack.[2] The refusal of a justice of the peace to grant a change of venue, or a change of justices, does not, according to the weight of authority, render the subsequent proceedings void.[3] A board of county commissioners or supervisors does not lose jurisdiction, although it wrongfully refused to permit the withdrawal of a sufficient number of petitioners from the petition to make the number less than that requisite to the existence of jurisdiction.[4] In these respects, and in many other particulars, statutory tribunals are held to possess powers equally as great as those of the highest courts of

[1] State *v.* Board, 101 Ind. 69; Hill *v.* Probst, 120 Ind. 528.

[2] Commissioners of Knox County *v.* Aspinwall, 21 How. (U. S.) 539; Town of Coloma *v.* Eaves, 92 U. S. 484; Commissioners *v.* Bolles, 94 U. S. 104; Henline *v.* People, 81 Ill. 269; Roderigas *v.* East River, etc., Co., 63 N. Y. 460, S. C. 20 Am. R. 555; Porter *v.* Purdy, 29 N. Y. 106; Ryan *v.* Vargas, 37 Iowa, 78; Smith's Leading Cases (8th Am. ed.), 1116; Evansville, etc., Co. *v.* The City of Evansville, 15 Ind. 395; Alexander *v.* Gill, 130 Ind. 485, S. C. 30 N. E. R. 525, 527; McEnneney *v.* Town of Sullivan, 125 Ind. 407, 412; Montgomery *v.* Wasem, 116 Ind. 343, 351; Ballard *v.* Thomas, 19 Gratt. 14, 20.

[3] Bryant *v.* Ballance, 66 Ill. 188; Swan *v.* Bournes, 47 Iowa, 501; City of Ottumwa *v.* Schaub, 52 Iowa, 515; Barnhart *v.* Davis, 30 Kan. 520; Turner *v.* Conkey, 132 Ind. 248, S. C. 31 N. E. R. 777.

[4] Rock Creek *v.* Strong, 96 U. S. 271; Orleans *v.* Platt, 99 U. S. 676; Lyons *v.* Munson, 99 U. S. 684; Town of Springport *v.* Teutonia Bank, 84 N. Y. 403, *contra;* Hord *v.* Elliott, 33 Ind. 220.

original jurisdiction, and hence it seems illogical to hold that such statutory tribunals, although having wide exclusive original jurisdiction and a permanent existence, are courts of limited inferior jurisdiction.

§ 155. **Legislative courts—Influence of fundamental principles.**—The fact that the jurisdiction of a court is defined by statute does not exclude the rules of the common law unless the exclusion appears by express words or necessary implication. The legislature may, of course, define the jurisdiction of a court it has power to create, by designating the classes of cases or the subjects over which its authority shall extend, but, in doing this, the whole field of jurisdiction is not covered, for certain principles of organic unwritten law enter into the statute as silent factors. These factors, powerful as they are, can not always control the general subjects and classes, but they do control as to incidents of such subjects and classes. Thus a court has authority without any express statute to make *nunc pro tunc* orders, and to frame the remedy so as to give appropriate relief. Fundamental principles can not be violated in creating courts although such principles are not given direct and explicit expression in the constitution. Broad as the legislative power is under a general grant of authority to establish courts, it can not violate principles that form part of the foundation of the judicial structure. Thus, the legislature can not make a man a judge in his own case although there may be no express provision in the constitution forbidding such legislation. The reason for this conclusion is that the principle that a man shall not be a judge in his own case is part of the foundation of the judicial system, and was part of it when our American constitutions were adopted. As this fundamental principle was part of an organized and existing system, the constitution must be deemed to so far have recognized and sanctioned it as to make it binding upon the legislature as well as upon all the other organs of government. The principle that written constitutions are to be construed with reference to

existing and organized institutions of society really involves and requires the conclusion we have stated, and it has been directly asserted by able courts and authors.[2] There is a spirit in constitutions more powerful than the words. We constantly call to mind in considering constitutional questions great historical events and instruments, as the *Magna Charta*, the *Petition of Right*, and the like, and it is the principles of which great events and great instruments are the expressions and witnesses that give life and vigor to written constitutions. If it were not for these principles the words of constitutions would be dead and powerless.[3] It is, therefore, true that all principles that undergird and uphold the government are not expressed in words, but have their life and abiding place in the spirit of the constitution, so that in determining the authority of the legislature in creating courts we must often go behind the words of the constitution to the principles which it sanctions and confirms.

§ 156. **Inherent and implied powers of courts.**—It is not necessary that the statute should specifically and in detail designate the authority or power of a court. The creation of a court brings into existence powers and duties essential to the discharge of judicial authority without any specification of such powers and duties.[4] What constitutes judicial power, and what

[1] Durham *v.* State, 117 Ind. 477; Van Walters *v.* Board of Children's Guardians, 132 Ind. 567, S. C. 32 N. E. 56; Johnston *v.* State, 128 Ind. 16, 18; State *v.* Noble, 118 Ind. 350, 361.

[2] Cooley Const. Lim. 510; Ames *v.* Port Huron, etc., Co., 11 Mich. 139; Hall *v.* Thayer, 105 Mass. 219; State *v.* Crane, 36 N. J. L. 394; Cypress, etc., Co. *v.* Hooper, 2 Met. (Ky.) 350; Scuffletown, etc., Co. *v.* McAllister, 12 Bush. 312; Reams *v.* Kearns, 5 Cold. (Tenn.) 217; Lanfear *v.* Mayor, 4 La. 97, S. C. 23 Am. Dec. 477.

[3] Professor Tiedeman, after giving definitions of a constitution, and constitutional law, says: "If these definitions be accepted as true, the conclusion is irresistible that the fundamental principles which form the State can not be created by any governmental or popular edict; they are necessarily found imbedded in the national character, and are developed in accordance with the national growth." The Unwritten Constitution of the United States, 16. See State *v.* Denny, 118 Ind. 382.

[4] Smythe *v.* Boswell, 117 Ind. 365; Boswell *v.* Boswell, 117 Ind. 599; Nealis *v.* Dicks, 72 Ind. 374; *Ex parte* Robinson, 19 Wall. 505; *Ex parte* Terry, 128 U. S. 289; Anderson *v.* Dunn, 6 Wheat. 204; Little *v.* State,

attributes are incident to judicial tribunals are matters of which knowledge is taken without any positive statutory specifications. They are known because they existed before written constitutions were adopted or statutes enacted, and they are sanctioned and confirmed by the organic and the statutory law. Constitutions are to be interpreted as the work of men writing where organized society exists and with reference to existing institutions.[1]

§ 157. **Court can not divest itself of jurisdiction.**—Where the law invests a court with jurisdiction over a class of cases and authority over a case belonging to the class is once effectively acquired, it must be exercised. There is no election on the part of the court. The law conferring jurisdiction is imperative, and must be obeyed.[2] A court can not by its own voluntary action deprive parties of the rights with which the law invests them, nor can it escape the duty it owes to the public to exercise the functions and duties devolved upon it by law. The authority to decide and the duty to decide are coexistent, and where the authority exists there dwells the duty. The public have an interest in the judicial system of a State or nation as well as individual litigants or individual judges, and that interest can not be disregarded.[3]

90 Ind. 338; Hawkins *v.* State, 125 Ind. 570; State *v.* Morrill, 16 Ark. 384; People *v.* Wilson, 64 Ill. 195; *Ex parte* Biggs, 64 N. C. 202; Commonwealth *v.* Dandridge, 2 Va. Cases, 408; State *v.* Matthews, 37 N. H. 450; Arnold *v.* Commonwealth, 80 Ky. 300, S. C. 44 Am. R. 480; *In re* Neagle, 14 Sawyer U. S. C. C. 232, S. C. 5 Lawyers' Rep. Anno. 78; United States *v.* Hudson, 7 Cranch, 32; *In re* Neagle, 135 U. S. 1. A very able and instructive article upon this general subject from the pen of Mr. Justice Henry B. Brown will be found in volume xii of the reports of the American Bar Association, p. 263. See, also, Belvin *v.* Richmond, 85 Va. 574.

[1] Cooley's Const. Lim. (5th ed.), 73; Durham *v.* The State, 117 Ind. 477; Johnston *v.* State, 128 Ind. 16, 18; State *v.* Denny, 118 Ind. 382; Davis *v.* State, 119 Ind. 555, 556; Van Walters *v.* Board of Children's Guardians, 132 Ind. 567, S. C. 32 N. E. R. 56.

[2] Arroyo Ditch Co. *v.* Superior Court, 92 Cal. 47, S. C. 27 Am. St. R. 91; State *v.* Noble, 118 Ind. 350, 371. An officer under a duty to decide can not rightfully escape that duty. O'Brien *v.* Moss, 131 Ind. 99, 102.

[3] Speaking of the general duty to decide cases within their jurisdiction, the Court of Appeals of New York said: "If this provision were intended solely for the protection of the court

§ 158. **Term—When it begins.**—The term of court is generally held to commence on the day it actually convenes in session. It is sometimes important to determine when a term does begin, especially is this so in jurisdictions where the liens of judgments attach on the first day of the term, although rendered at a later date during the term. The question has arisen between lien-holders, and the decisions are that the lien of a judgment does not attach until the court is opened.[1]

§ 159. **Duration of the term.**—The term is the period prescribed by law.[2] Thus, if the law provides that the term shall be six weeks, that is the term, in legal contemplation, although the judge may be absent during part of that period. It has, indeed, been held that the period prescribed constitutes the term whether there be any actual session or not.[3] Where the duration of a term is definitely fixed the term ends, as a general rule, at the time prescribed, but where a trial is in progress the term may be prolonged so as to conclude the trial.[4] It has been held that where the term provided for is required to begin on Monday and continue in session for one week, it will close, by operation of law, at twelve o'clock of the following

or its judges they might waive it, but we do not think it was so intended. It was, in our judgment, intended for the benefit of the people, and to secure litigants a forum in which they might have these controversies adjudged. The jurisdiction which the constitution preserves in the courts named is inalienable, and carries with it on the part of those courts to exercise it when called upon in proper form to do so." Alexander *v.* Bennett, 60 N. Y. 204.

[1] Follett *v.* Hall, 16 Ohio, 111, S. C. 47 Am. Dec. 365; Davis *v.* Messenger, 17 Ohio St. 231; Hemminway *v.* Davis, 24 Ohio St. 150. In the case first cited it was said: "At what time, then, does a term of court begin? It can not be said that a term of court commences before the judges authorized to hold court have convened. There can be no term of court unless there is a court. To fix a time by law to hold court does not make a court."

[2] Bush *v.* Doy, 1 Kan. 86; Horton *v.* Miller, 38 Pa. St. 270. See, generally, Napper *v.* Noland, 9 Port. (Ala.) 218; *Ex parte* Wreford, 40 Ala. 378; People *v.* Sanchez, 24 Cal. 17; Moore *v.* Felkel, 7 Fla. 44; Weatherford *v.* Shegag. 28 Ga. 194; Wight *v.* Wallbaum, 39 Ill. 554; Addington *v.* Wilson. 5 Ind. 137; Seymour *v.* State, 15 Ind. 288; Redwine *v.* State, 15 Ind. 293; Swails *v.* Coverdill, 21 Ind. 271; Barrett *v.* State, 1 Wis. 175; Revel *v.* State, 26 Ga. 275.

[3] Downey *v.* Smith, 13 Ill. 671. See, generally, Norwood *v.* Kenfield. 34 Cal. 329; McAfee *v.* State, 31 Ga. 411; People *v.* Northrup, 50 Barb. 147.

[4] State *v.* Knight, 19 Iowa, 94.

Saturday night.[1] The length of terms and the right to prolong them are so much matters of statutory regulation that rules can not be laid down, except as to matters where general principles are of controlling effect.

§ 160. **The common law fiction that the term is as one day.**—The common law judges, proceeding upon a fiction of their own invention, correspondent to that invented by Parliament, regarded a term of court, no matter how long its duration, as consisting of a single day.[2] The courts, acting upon this legal fiction, referred all acts to the first day of the term.[3] The fiction gives way before statutory provisions, and where a statute either expressly or by implication comes into conflict with the common law doctrine, that doctrine must yield.[4]

§ 161. **Terms—Business.**—Where the law expressly prescribes what business shall be transacted at a particular term, the court can not, without error, transact any other business than that prescribed.[5] If, however, there is a discretion conferred upon the judge, that discretion can not be controlled; but should there be an abuse of discretion, resulting in any injury to a party, the appellate courts would undoubtedly grant proper relief upon seasonable application and a proper presentation of the question. It has been held that a court can not, by an arbitrary rule, declare what business shall be transacted at a term in cases where the law provides what business shall

[1] Favis *v.* Fish, 1 Greene (Iowa), 406. See, generally, Grable *v.* State, 2 Greene (Iowa), 559.

[2] In the case of Newhall *v.* Sanger, 92 U. S. 761, 765, the court said: "The appellee invokes the doctrine that judgments of a court during a term are, by relation, considered as having been rendered on the first day thereof. There is a fiction of law that a term consists of but one day, but such a fiction is tolerated only for the purposes of justice." Gibson *v.* Chouteau, 13 Wall. 92.

[3] Richardson *v.* Beldam, 18 Ill. App. 527; Manchester *v.* Herrington, 10 N. Y. 164; Garrard County Court *v.* McKee, 11 Bush. (Ky.) 234; State *v.* Martin, 2 Ired. N. C. 101.

[4] Clifton *v.* Wynne, 81 N. C. 160.

[5] Wicks *v.* Ludwig, 9 Cal. 173; Norwood *v.* Kenfield, 34 Cal. 329; Germond *v.* People, 1 Hill, 343; Mills *v.* Commonwealth, 13 Pa. St. 627. See *Ex parte* Bennett, 44 Cal. 84; People *v.* Wicks & Jones, 20 Cal. 51.

be transacted.[1] It is doubtful whether the case to which we have referred can be sustained, for the regulation of business is so much a matter of discretion that it is only in very clear cases and upon a clear showing that the rules or orders of the trial court arranging the calendar and declaring what causes shall be tried can be reviewed on appeal. The general rule certainly is, that the regulation of matters of business rests largely and almost entirely with the court of original jurisdiction. It is, of course, conceivable that there may be cases where there is an arbitrary and unreasonable exercise of power, constituting an abuse of discretion justifying the interference of a court of review, but such cases, although conceivable, are very rare.

§ 162. **Terms of court—Time of holding.**—There is confusion and conflict upon the question of the effect of a judgment rendered at a term held at a time different from that fixed by law. Some of the courts lose sight of the important difference between a direct and a collateral attack, and assert that an erroneous decision as to the time for holding a term renders judgments pronounced at such a term absolutely void. Our opinion is that where there is a question as to the time at which a session or term may be held that is fairly debatable, so that there is an actual question for decision, the judgment is not void although it may be erroneous.[2] If erroneous a direct attack may prevail, but a collateral one can not. If there is no question for decision and the term is held in plain violation of

[1] State *v.* Posey, 17 La. Ann. 252, S. C. 87 Am. Dec. 525. It is a wide stretch of appellate jurisdiction to hold, as was done in the case referred to, that an appellate tribunal may substitute its judgment for that of the *nisi prius* court concerning the business that shall be transacted at a designated term.

[2] We do not doubt that it is error available always on appeal, where the question is made and saved, to hold a term at the wrong time, although there may be fair reason supporting the action of the court in holding the term, but notwithstanding the fact, as appears from the cases cited in this and other notes, that the weight of authority is that the action of the court is totally void, we venture to say that true principle requires a different conclusion. See, however, Smithson *v.* Dillon, 16 Ind. 169; Coffinberry *v.* Horrill, 5 Cal. 493; Bowden *v.* Hatcher, 83 Ga. 77, S. C. 9 S. E. R. 724; Dalton *v.* Libby, 9 Nev. 192; Cooper *v.* American, etc., Co., 3 Colo. 318.

a positive statute, there is reason for declaring that the proceedings are *coram non judice*, but where there is a question to be determined, whether it be as to the construction of a constitution or of a statute, or some other question of a jurisdictional nature, the decision upon that question may be erroneous but it can not be justly said to be absolutely void. If void it may, of course, be treated without respect and everywhere disregarded. Where there is a plain, explicit, and positive statute designating the time at which terms shall be held there is ground for asserting that there is no question for decision, and the proceedings may, perhaps, be regarded as utterly destitute of force without a violation of principle. But even in such cases there is reason for doubting whether the proceedings of the tribunal can be declared utterly void, inasmuch as it may be said with fair show of reason that the tribunal is called upon, as the first step toward the exercise of authority, to determine whether there is a plain and explicit statute. It is, at all events, quite clear that proceedings should not be condemned in a collateral attack because the court was held at a time not authorized by law where there is a debatable question as to the right to hold it at the time it was actually held. The consequences of holding judgments void are disastrous and often work injustice to innocent parties and to ministerial officers who have acted upon the belief that the courts have not defied or disobeyed the law by holding an entirely unauthorized session. It is going quite far enough, perhaps too far, to hold that where a tribunal assumes to sit at a time fixed by law its judgments are void if the time at which the term was held was different from that fixed by a plain and unambiguous statute. It is certainly going far beyond reason or right to hold that judgments given at a term held at a different time than that fixed by statute are entirely void although there may be a question fairly admitting of debate as to the time at which the term should be held. Many loose expressions in the cases, and, indeed, many of the decisions, require limitation and qualification, for the broad doctrine they assert is radically unsound and in direct conflict with settled principles. One

who plows through the decisions upon this general subject will find the confusion deepen as he moves on.

§ 163. **Terms of court—Holding at improper time.**—The conflict in the adjudged cases upon the subject of holding courts at a time other than that prescribed by statute is a stubborn one, and, as indicated in the preceding paragraph, some of the courts have gone to great lengths.[1] Those courts have, as it seems to us, gone beyond principle and have not been mindful of the principle that there may be a *de facto* tribunal as well as *de facto* judges. As we shall show when we come to consider the question of judges, there may be *de facto* judges although there is nothing more than a bare color of right to hold the office. The courts, we venture to say, should be slow to strike down judgments upon collateral attacks, and should never do so where there is a fairly debatable question as to the right of the court to hold the session or term. Relief may, of course, be granted where there has been an injury done to a party because of a mistake as to the time of holding the term, or where there is excusable ignorance, but the relief should be granted upon some other ground than that which assumes and declares that there was no court. There is, it is obvious, a wide and plainly marked distinction between cases where the assault is a direct one and cases where it is purely collateral. Where the attack is direct and the objection is seasonably made and the objection properly reserved, there can be no doubt that the

[1] Garlick *v.* Dunn, 42 Ala. 404; Dunn *v.* State, 2 Ark. 229, S. C. 35 Am. Dec. 54; McCool *v.* State, 7 Ind. 378; Grimmett *v.* Askew, 48 Ark. 151, S. C. 2 S. W. R. 707; Brumley *v.* State, 20 Ark. 77; Freeman *v.* Gaither, 76 Ga. 741; Sellers *v.* Cheney, 70 Ga. 790; Galusha *v.* Butterfield, 2 Scam. (Ill.) 227; Packard *v.* Packard, 34 Kan. 53; Earls *v.* Earls, 27 Kan. 538; McDonald *v.* Bunn, 3 Denio, 45, 49; Hodges *v.* Ward, 1 Texas, 244; *In re* Millington, 24 Kan. 214; Robinson *v.* Ferguson, 78 Ill. 538, 541; Campbell *v.* Chandler, 37 Texas, 32. See, generally, *Ex parte* Maney, 38 Tex. 344; Wicks *v.* Ludwig, 9 Cal. 173; Norwood *v.* Kenfield, 34 Cal. 329, 333; Bates *v.* Gage, 40 Cal. 183; Domingues *v.* Domingues, 4 Cal. 186; State *v.* Robey, 8 Nev. 239; *Ex parte* Roberts, 9 Nev. 44; Haws *v.* Clark, 37 Iowa, 355; Cain *v.* Goda, 84 Ind. 209; Batten *v.* State, 80 Ind. 394. The distinction between cases where there is a question to decide and authority to make a decision is pointed out in Smurr *v.* State, 105 Ind. 125, 128.

proceedings should be adjudged erroneous. So, where the time at which the term is held is one forbidden by law there is, in strict reason and by clear authority, no court;[1] but when there is no direct prohibition and there is a question for decision, this doctrine, we say again, ought not to prevail where there is a purely collateral attack and no equitable grounds, as excusable ignorance or mistake, upon which the party is entitled to relief.[2] The true rule is, as it seems to us, that where there is general authority to hold a term, and there is a question as to the time at which it should be held, there is nothing more than error, although the term is held at the wrong time.[3]

§ 164. **De facto terms.**—Where a term or session of a court is held by judicial officers having color of authority and color of right to hold the session or term there is, as we believe, a *de facto* term, although there may not be one *de jure*. There may be, and there often is, a *de facto* court,[4] and if there may

[1] Hemmens *v.* Bentley, 32 Mich. 89; *In re* Circuit Court, 1 New Zealand Court of Appeals, 329, 331; Estes *v.* Mitchell, 14 Allen, 156; Lampe *v.* Manning, 38 Wis. 673; Chapman *v.* State, 5 Blackf. 111; Shearman *v.* State, 1 Texas App. 215, S. C. 28 Am. R. 402; Blood *v.* Bates, 31 Vt. 147.

[2] Parker *v.* Kett, 1 Ld. Raymond, 658.

[3] This rule is thus stated in a late work: "Whether or not the proceedings of a judicial tribunal held at a time not fixed by law are void collaterally, the decisions somewhat conflict. The majority in number hold them void, while a small minority hold otherwise. On principle I think the minority right. It does not seem to me to be a question of statutory construction or of color of right, but a question of the *de facto* organization of the tribunal. The statute may fix the time so plainly and unequivocally that all contention in regard to its meaning is out of the question. It may simply be overlooked, and a term held in violation of it. Yet the tribunal is in existence. The judges and all the officers are present. They actually set the judicial wheels in motion, and have the power of the State at command to enforce obedience. They have the reputation of being what they assume to be, and the power to enforce their assumption, and that makes a *de facto* tribunal under the best approved definition." Van Fleet Collateral Attack, § 30; Venable *v.* Curd, 39 Tenn. 582; Cheek *v.* Merchants, etc., Bank, 65 Tenn. 489; Brewer *v.* State, 74 Tenn. 198, 203; Smurr *v.* State, 105 Ind. 125, 132, S. C. 4 N. E. R. 445.

[4] In the case of Burt *v.* The Winona, etc., Co., 31 Minn. 472, the court, after referring to the general doctrine of *de facto* officers and citing the cases of State *v.* Brown, 12 Minn. 490; State *v.* Carroll, 38 Conn. 449, 467; State *v.* Carr, 5 N. H. 367; People *v.* Maynard, 15 Mich. 463; President, etc.,

be a *de facto* tribunal capable of pronouncing judgments valid as against collateral attacks there is no reason why there may not

v. Thompson, 20 Ill. 197; Kettering *v.* City of Jacksonville, 50 Ill. 39; Town of Geneva *v.* Cole, 61 Ill. 397; Kayser *v.* Trustees of Bremen, 16 Mo. 88; State *v.* Weatherby, 45 Mo. 17; City of St. Louis *v.* Shields, 62 Mo. 247, said:

"In Secombe *v.* Kittelson, 29 Minn. 555, the court held, in effect, that there might be a *de facto* State government. In the line of these authorities are the only two cases we have found in which an attempt was made to contest collaterally the legal existence of a court. Fraser *v.* Freelon, 53 Cal. 644, was *certiorari* to review the proceedings of the municipal court of appeals of San Francisco in a private action. An attempt was made to draw in question the legality of that court. The Supreme Court, after referring to the rule in case of a *de facto* officer said (647): "It is manifest that the question whether the office itself, which was attempted to be created by statute, has a legal existence, is of vastly more importance and of greater interest to the public than the question of the right of the incumbent," and held that the question could not be raised except in an action or proceeding by the State. State *v.* Rich, 20 Mo. 393, was an appeal from a judgment of the Lawrence County Circuit Court, quashing an indictment found in and removed into it from the Stone County Circuit Court, on the ground that the latter county had not been constitutionally established, and consequently there could be, in point of law, no such court as the Stone County Circuit Court where an indictment could lawfully be found. The Supreme Court held (397) that "all such inquiries must be excluded whenever they come up collaterally, and the county, its courts and officers, must be treated as things existing in fact, the lawfulness of which can not be questioned, unless in a direct proceeding for that purpose." In view of these authorities, and of the reason that underlies the rule applied to acts of persons in the actual exercise, under certain circumstances, of the duties of public officers, and of the great public mischiefs that might sometimes arise but for the application of the rule to courts, we arrive at the conclusion that there may be *de facto* courts or offices, the legality of whose existence can not be questioned, except in a direct proceeding by the State for that purpose.

We need not in this case attempt a definition to cover all instances of a court or office *de facto*. It is enough to determine upon the particular facts of this case. But we may go so far as to lay down this proposition, that where a court or office has been established by an act of the legislature apparently valid and the court has gone into operation, or the office is filled and exercised under such act, it is to be regarded as a *de facto* court or office —in other words, that the people shall not be made to suffer because misled by the apparent legality of such public institutions."

Asserting a similar doctrine are the cases of State *v.* Carroll, 38 Conn. 449, S. C. 9 Am. R. 409; State *v.* Anone, 2 Nott. & M. 27; Gilliam *v.* Reddick, 4 Iredell, 368; State *v.* Porter, 1 Ala. 688; Anderson *v.* Claman, 123 Ind. 471; White *v.* Fleming, 114 Ind. 560; Wilson *v.* Board, 68 Ind. 507; Mayo *v.* Stoneum, 2 Ala. 390; Masterton *v.* Matthews, 60 Ala. 260; State *v.* All-

be a *de facto* term in which judgments may be rendered against which collateral attacks can not prevail. The tribunal is greater than the term, and it is a maxim of logic, as well as of law, that the right to perform the greater act implies the right to do the lesser. But in order to make the term a *de facto* one there must be color of right to hold it, and it must be held by persons who are not mere usurpers. If there is no law providing for the office there can, according to the weight of authority, be no *de facto* officers,[1] but where there is a law giving a colorable right to hold the office or the term there is a jurisdictional question for decision, and, as elsewhere shown, where there is such a question and a decision upon it, the proceedings can not be treated as absolute nullities. The question in such cases is whether there is a colorable right to hold the term and not whether there is a full and clear legal right. If there is a full legal right there is no room for the presumption of validity so often spoken of, nor office for the often asserted rule that a decision upon questions of a jurisdictional nature is conclusive against a collateral attack.

§ 165. **Place of holding court.**—The authorities are well agreed upon the general proposition that it is error to hold a term of court at the wrong place. Some of the cases go further, and assert that the law must provide a place for holding the court, and that a term held at any other than that provided is, in every instance, absolutely void.[2] We think there is confusion and error in many of the decisions upon this point. Our judgment is that if the parties treat the place as the proper one, and

ing, 12 Ohio, 16; Prezinger *v.* Harness, 114 Ind. 491, S. C. 16 N. E. R. 495; Prezinger *v.* Fording, 114 Ind. 599, 16 N. E. R. 499; Keene *v.* McDonough, 8 Pet. 308; Meagher *v.* Storey Co., 5 Nev. 244; Commonwealth *v.* McCombs, 56 Pa. St. 436. But see Kelly *v.* Bemis, 4 Gray, 83, S. C. 64 Am. Dec. 50, and note.

[1] *In re* Allison, 13 Colo. 525, S. C. 16 Am. St. R. 224; *Ex parte* Stout, 5 Colo. 509.

[2] Tenny *v.* Filer, 8 Wend. 569; King *v.* King, 1 Rawle P. & W. (Pa.) 15; Block *v.* Henderson, 82 Ga. 23, S. C. 8 S. E. R. 877; Capper *v.* Sibley, 65 Iowa, 754, S. C. 23 N. W. R. 153; Glass *v.* The Sloop Betsey, 3 Dallas, 6; Doe *v.* Whitaker, 5 B. & Ad. 409, 525. See, generally, Michigan, etc., Co. *v.* North Indiana, etc., Co., 3 Ind. 239; McClure *v.* McClurg, 53 Mo. 173; Wightman *v.* Karsner, 20 Ala. 446; Brumley *v.* State, 20 Ark. 77.

conduct the trial upon that theory, they can not afterwards successfully assail the proceeding by a collateral attack. Much of the confusion is due to the failure to discriminate between void and voidable proceedings. This is a fruitful source of error.[1] If proceedings are absolutely void, no act of the parties can impart validity to them, but if they are voidable only the parties may validate them by their acts and conduct. We are unable to resist the conclusion, notwithstanding the weight of authority, that the true rule is that where there is a fair question as to the place where the court should hold its term, its decision upon that question is sufficient to give validity to the proceedings as against a collateral attack.[2] As we shall show at another place, the general rule is that where parties consent to the holding of a term at a given time or place, and there is a colorable right to hold the term, the parties will not be allowed even on appeal to overthrow the judgment because the term was held at the wrong time or place. If the act of the tribunal in holding a term or session at the wrong time or place was absolutely void, it could not be given vitality by express consent, much less by an implied waiver, and, this being true, it can not be true that the act is absolutely void, for a void act is one to which validity can not be imparted. While it is error to hold a term of court at a place other than that designated by law, the term "place" is not always to be understood as signifying a particular spot or building.[3] Where there is a sufficient reason for not holding the term at the particular place

[1] Earle *v.* Earle, 91 Ind. 27; Smith *v.* Hess, 91 Ind. 424. In the case last cited it was said: "Some confusion has been brought into the cases by the use of the terms 'void' and 'voidable,' as applied to judgments. Judgments are frequently spoken of as void, because they may be so declared in a proper proceeding."

[2] Bouildin *v.* Ewart, 63 Mo. 330; Watts *v.* State, 22 Tex. App. 572, S. C. 3 S. W. R. 769; State *v.* Peyton, 32 Mo. App. 522, 528; *In re* Allison, 13 Col. 525, S. C. 16 Am. St. R. 224; Sevier *v.* Teal, 16 Texas, 371; Reams *v.* McNail, 28 Tenn. 542; Rogers *v.* Loop, 51 Iowa, 41; Price *v.* Peters, 15 Abb. Pr. R. 197, 200; Gregory *v.* Bovier, 77 Cal. 121, 19 Pac. R. 233; Jones *v.* The Church, etc., 15 Neb. 81, S. C. 17 N. W. R. 362; Sewall *v.* Ridlon, 5 Greenl. (Me.) 452; Cheatham *v.* Brien, 40 Tenn. 552; Krueger *v.* Beckham, 35 Kan. 400, S. C. 11 Pac. R. 158; Hudspeth *v.* State, 55 Ark. 323, S. C. 18 S. W. R. 183.

[3] Litchfield Bank *v.* Church, 29 Conn. 137; Lee *v.* State, 56 Ark. 4, S. C. 19 S. W. R. 16.

appointed, as, for instance, in the court-house, the court may be held elsewhere in the same town or city. The judge has undoubtedly some discretion in such matters, and unless it is abused to the prejudice of a party he can not successfully complain. The place of holding court is, however, always a matter of importance. It has, indeed, been held that the legislature itself can not authorize terms of a court of general jurisdiction to be held elsewhere than at the county seat.[1] It has also been adjudged that, where a statute requires the judges to designate the places of holding court, the statutory command must be obeyed.[2] The same general principle is declared in the case which holds that the orders of a judge of a circuit court made in a county of his circuit other than the county in which the action is pending, is ineffective.[3]

§ 166. **Adjourned terms—General doctrine.**—Where there is a statute positively fixing the duration of a term and giving no authority to hold an adjourned term, the court can not order that an adjourned term be held. Many of the cases go so far as to assert that if there is an adjourned term held, although there is color of authority to hold it, the proceedings are *coram non judice*, if the term is held at an unauthorized time. With this extreme view we can not agree. Our opinion is that wherever there is color of authority sufficient to call into exercise the judicial judgment, the proceedings are not *coram non judice*, although there may be a manifest and palpable error of judgment. This conclusion rests upon the broad general principle, which we have already referred to, that where there is sufficient ground to require the exercise of the judicial judgment, and that judgment is called into exercise, the proceedings are not void. If there is anything to decide there is necessarily some matter for judicial consideration, and if the judicial judgment is given upon that matter, there is no valid reason for asserting that the judgment is so utterly devoid of force

[1] Coulter *v.* Routt County, 9 Col. 258. See Wheeler *v.* Wheeler, 76 Texas, 489, S. C. 13 S. W. R. 305.

[2] Northrup *v.* People, 37 N. Y. 203.

[3] Gillespie *v.* See, 72 Iowa, 345, S. C. 33 N. W. R. 676.

as to deprive it of respect. If entitled to respect, and not a thing to be everywhere disregarded, and by everybody treated as devoid of force, it can not be justly adjudged void. If there is an entire absence of authority to consider the matter at all, or if the court assumes to act without color or appearance of authority, or without any ground whatever for assuming to decide, it is otherwise.

§ 167. **Adjourned terms—Errors and irregularities.**—It is the duty of a court to follow the law in directing and holding adjourned terms. If the law is disobeyed in a material particular, the proceedings may be assailed as erroneous by a party who properly objects and duly saves exceptions. But, according to what we regard as the better rule, a party who enters upon a trial, or participates in proceedings, without objection, can not assail the proceedings upon the ground that the adjourned term was irregularly ordered or held. By proceeding without objection, he waives the right to subsequently assail the orders or judgments of the court at the adjourned term it assumed to rightfully hold.[1] There are, however, decisions declaring that proceedings at an adjourned term irregularly held are absolutely void, and that their invalidity is not waived by the consent of the parties.[2]

§ 168. **Order for adjourned term.**—Where the statute makes specific provision for holding adjourned terms there must, in order to make an adjourned term valid as against a direct attack appropriately made, be a substantial compliance with the requirement of the statute, and an order which is substantially and ma-

[1] Louisville *v.* Power, 119 Ind. 269, 271; Schlungger *v.* State, 113 Ind. 295; Ard *v.* State, 114 Ind. 542; Mannix *v.* State, 115 Ind. 245. See State *v.* Knight, 19 Iowa, 94; Weaver *v.* Cooledge, 15 Iowa, 244. The doctrine of the text is fully supported by analogous cases. Thornton *v.* Baker, 15 R. I. 553, S. C. 2 Am. St. R. 925; Ela *v.* McConihe, 35 N. H. 279; Railway Co. *v.* Ramsey, 22 Wall. 322.

[2] Nabors *v.* State, 6 Ala. 200; Galusha *v.* Butterfield, 2 Scam. 227; Gregg *v.* Cooke, 7 Tenn. 82; Davis *v.* Fish, 1 G. Greene (Ia.), 406, S. C. 48 Am. Dec. 387; Grable *v.* State, 2 G. Greene, 559. Where an officer, who has no authority to make the order, assumes to order an adjourned term to be held, the order is a mere nullity. Thomas *v.* Fogarty, 19 Cal. 644.

terially different from that prescribed would not sustain proceedings as against such an attack. Where the court assumes to hold an adjourned term and there is nothing in the record to show that it was not held upon a proper order we think it should be presumed that the order conformed to the statute. This doctrine is in harmony with the general rule that the proceedings of courts are presumed to be regular and legal until the contrary is made to appear,[1] and we can see no reason why this general rule should not be regarded as a sufficient support for the doctrine we have stated.[2] The presumption always is that where there is general jurisdiction the proceedings were regular and legal,[3] and this presumption ought, in reason, to be given effect where the question is as to the validity of an adjourned term of court. It is obvious, however, that this presumption can not prevail where the statute definitely and explicitly fixes the time for the terms of court and there is an entire denial or absence of authority to hold adjourned terms. It has been held that where the legislature fails to designate a time for holding court special terms may nevertheless be held,[4] but while this doc-

[1] Tracey *v.* Altmyer, 46 N. Y. 598; Kennedy *v.* McNichols, 29 Mo.App.11; Chestnutt *v.* Pollard, 77 Tex. 86, S. C. 13 S. W. R. 852; Morisey *v.* Swinson, 104 N. Car. 555, S. C. 10 S. E. R. 754; Sidney, etc., Co. *v.* Warsaw School District, 130 Pa. St. 76, S. C. 18 Atl. R. 604; Walters *v.* Tefft, 57 Mich. 390, S. C. 24 N. W. R. 117; Bishop *v.* Village of Goshen, 120 N. Y. 337, S. C. 24 N. E. R. 720; Prilliman *v.* Mendenhall, 120 Ind. 279, S. C. 22 N. E. R. 247; Rapp *v.* Kester, 125 Ind. 79; Welsh *v.* State, 126 Ind. 71; Beeler *v.* Hantsch, 5 Blackf. 594; Maxam *v.* Wood, 4 Blackf. 297; Reddington *v.* Hamilton, 8 Blackf. 62.

[2] In Wood *v.* Franklin, 97 Ind. 117, 121, it was said: "And if a sufficient notice be given the adjourned term will be legal, although the court made no order as to notice. Conrad *v.* Johnson, 20 Ind. 421. The record not showing to the contrary, the presumption is that the adjourned term was lawfully held." The court cited the cases of Washer *v.* Allensville, etc., Co., 81 Ind. 78; Green *v.* White, 18 Ind. 317. See, however, Clelland *v.* People, 4 Colo. 244.

[3] Carman *v.* Pultz, 21 N. Y. 547; Smith *v.* Newland, 9 Hun, 553, 554; Phillip *v.* Gallant, 62 N. Y. 256, 265; Tracey *v.* Altmyer, 46 N.Y. 598, 604; Swearingen *v.* Wilson (Tex.Civ.App.), 21 S. W. R. 74; McDonald *v.* Dodge, 97 Cal. 333, 31 Pac. R. 909; State *v.* Maloney (Mo.), 20 S. W. R. 1064.

[4] *In re* Wells, 36 Kan. 341. A very strict rule upon the general subject was laid down in the case of Hays *v.* State, 39 Ga. 718, although it was there held, and rightly, as we believe, that where objection was not properly and seasonably interposed the parties could not avail themselves of the error

trine may, perhaps, be upheld under peculiar and liberal statutes it is one that can not be safely extended. Parties must, it seems to us, have a right to be informed by a public law or by a proceeding substantially conforming to such a law of the time at which they are expected to appear or try their causes, for, if it were otherwise they could have no knowledge of the time when steps would be taken in causes to which they were parties. The decisions are generally favorable to the validity of adjourned terms and the courts are reluctant to overthrow proceedings at such terms.[1] But while the rule is liberal in favor of adjourned terms, yet it is not so liberal as to dispense

or irregularity. In the case referred to it was said, in substance, that it is the imperative duty of the judge of superior courts to hold the courts at the regular times fixed by law, and he has no right to adjourn any of said courts from the regular term to some other time, by order in vacation, unless it is, in the language of the statute, "not possible for him to attend the regular term of said court." And in case the judge, by order in vacation, adjourns over the regular term of the court to any other time, for any other cause than those expressed by the statute, no party litigant can be compelled to try his case before the judge at such irregular term. But if the parties in a civil case go to trial without objection, they will not afterward be heard to set up irregularity.

[1] Where the judge, being absent from the State, wrote and telegraphed to the clerk to adjourn the approaching term of court to a further date, and the clerk, in accordance with the telegram, publishes a notice of the adjournment, and notified parties, jurors and witnesses, but no proclamation of the adjournment was made at the day for opening the term, and the written order was not filed nor entry thereof upon the record made until after the opening of the term at the time to which it was so adjourned, nor until after defendant, who was held for trial at the regular term under a continuance from a previous term, had filed his protest against being tried at such adjourned term, held, that a *nunc pro tunc* record of the order was sufficient, and the trial of the defendant was properly held at the adjourned term, no prejudice being shown. State *v.* McGuire, 53 Iowa, 165. The adjournment of the January term of court in one county to a term subsequent to the holding of the February term of the court in another court of the same district has been held valid. *In re* Hunter's Estate (Iowa), 51 N. W. R. 20. Where the February term of the district court was continued to the 24th of May next thereafter, and the court did not convene on the said 24th pursuant to adjournment, the court is legally open until it adjourns *sine die* or expires by law. So held in State *v.* Bohan, 19 Kan. 28. See, also, Talbert *v.* Hopper, 42 Cal. 397; Cogswell *v.* Schley, 50 Ga. 481; State *v.* Holmes, 56 Iowa, 588.

with the requisite order or notice,[1] although as we have elsewhere shown, when due notice is given, the form of the order is not regarded as important. It is inferable from the language employed in some of the cases that if notice is given the absence of an order will not be fatal, but we regard such a doctrine as contrary to principle, inasmuch as we believe that the order is essential to authorize the notice, and without it the notice is utterly ineffective. We do not mean to be understood as saying that an adjourned term upon notice only is always *coram non judice*, for we incline to the opinion that if notice is given and the parties appear, or proceed with a trial, without objection, they can not afterwards successfully question the validity of the proceedings.

§ 169. **Notice of adjourned term.**—A liberal rule respecting notice of the time of holding an adjourned term has been adopted by the courts that have given the subject careful consideration.[2] It is generally held that a substantial compliance with the requirements of the statute is sufficient. Some of the courts go very far in holding notices of adjourned terms to be sufficiently full although the notices depart from the provisions of the statute.

§ 170. **Adjourned term—Waiver of objections.**—Where the parties are in court when a time for an adjourned term is appointed, they are bound to take notice, and if no objections are properly and seasonably interposed they can not afterwards be heard to object to the sufficiency of the order or notice.[3] But a party who has no knowledge of the adjournment, and neither

[1] Stovall *v.* Emerson, 20 Mo. App. 322.

[2] In Wise *v.* State, 34 Ga. 348, it was held that the provisions of a statute as to advertising the adjournment of the superior court were directory to the clerk, and although not complied with, the court may be held at the time fixed in the order of adjournment; and a party not prejudiced by the omission of the clerk can not complain. The plaintiff in error was not injured in the present case by such omission. As to the sufficiency of the publication of notice, see Board *v.* State, 61 Ind. 75. See, generally, Green *v.* White, 18 Ind. 317; Cordell *v.* State, 22 Ind. 1.

[3] Louisville, etc., Co. *v.* Power, 119 Ind. 269, S. C. 21 N. E. R. 751.

impliedly nor expressly acquiesces in the action of the court can not be regarded as having waived any rights.[1] The general rule is that a party does not waive objections to matters of which he had no knowledge and was not under a duty to take notice; but as to one who has knowledge, or is bound, in contemplation of law, to possess knowledge, the rule is essentially different.[2] Where the wrongful action goes so deep as to become a question of power, we suppose it clear that the doctrine of waiver can not be effectively applied, since parties can not invest courts with power where the law withholds or denies it. We make and mark a distinction between the existence of power and the mode of its exercise or employment.

§ 171. **Adjourned term regarded as continuance of regular term.**—It is generally held that an adjourned term is a continuance of the regular term.[3] It is the generally accepted doctrine that business of any kind remaining unfinished at the regular term may be transacted at the adjourned term held pursuant to the order of the court.[4] In one case it was held that

[1] Giles *v.* Caines, 3 Caines (N. Y.), 107; Newbery *v.* Furnival, 56 N. Y. 638.

[2] Ridenhour *v.* Kansas City, etc., Co., 102 Mo. 270, 283, S. C. 14 S. W. R. 760; Duigenan *v.* Claus, 46 Kan. 275, S. C. 26 Pac. R. 699; Mermory *v.* Niepert, 33 Ill. App. 131; Bradwell *v.* Pittsburgh, etc., Co., 139 Pa. St. 404, 20 Atl. R. 1046; Louisville, etc., Co. *v.* Rush, 127 Ind. 545, S. C. 26 N. E. R. 1010; Montana Ry. Co. *v.* Warren, 137 U. S. 348; Fisk *v.* Chicago, etc., Co., 74 Iowa, 424, S. C. 46 N. W. R. 998; Tibbetts *v.* Penley, 83 Me. 118, S. C. 21 Atl. R. 838; Williams *v.* Thomas, 3 New Mex. 324, S. C. 9 Pac. R. 356; Chicago, etc., Co. *v.* Greiney, 137 Ill. 628, S. C. 25 N. E. R. 798; Bliley *v.* Taylor, 86 Ga. 163, S. C. 13 S. E. R. 283; Connelly *v.* Shamrock, etc., Society, 43 Mo. App. 283; Clark *v.* Flint, 22 Pick. 231; First Congregational Society *v.* Trustees, 23 Pick. 148; Jones *v.* Keen, 115 Mass. 170; Matter of Cooper, 93 N. Y. 507; Baird *v.* Mayor, 74 N. Y. 382.

[3] People *v.* Ah Ying, 42 Cal. 18; Smith *v.* Smith, 17 Ind. 75; Leib *v.* Commonwealth, 9 Watts. (Pa.) 200; Fannon *v.* Plummer, 30 Mo. App. 25; Cole County *v.* Dallmeyer, 101 Mo. 57, 13 S. W. R. 687; Davis *v.* Finney, 37 Kan. 165, S. C. 14 Pac. R. 460. See, generally, United States *v.* Hood (D. C.), 19 Wash. Law R. 21; Johnson *v.* Pittsburgh, etc., Co., 47 Ohio St. 318, S. C. 24 N. E. R. 493; Lowenberg *v.* People, 27 N. Y. 336; Northrup *v.* People, 37 N. Y. 203; Mechanics' Bank *v.* Withers, 6 Wheat. 106; Vandyke *v.* State, 22 Ala. 57; Keen *v.* Queen, 10 Q. B. 927; Higgins *v.* Ransdall, 13 Mo. 205.

[4] Knight *v.* State, 70 Ind. 375; Green *v.* White, 18 Ind. 317; Keith *v.* State (Ala.), 10 Lawy. Rep. Anno. 430, S. C. 8 S. R. 353.

an indictment may properly be found at an adjourned term,[1] but we suppose that, where there is no statute authorizing entirely new business to be transacted, a grand jury could not be called together for the first time to consider cases not pending during the regular term. It has been held that a term can not be kept alive by an order of adjournment, assuming to overleap an intervening regular term;[2] but other cases greatly limit this general doctrine, if, indeed, they do not entirely deny it.[3]

§ 172. **Temporary adjournments.**—An adjournment from one day to another in term is a radically different thing from appointing a time for holding an adjourned or special term of court. An adjournment from a day in term to another day in the same term is nothing more than ordering a recess. Such an adjournment does not end the term, but, on the contrary, the term continues, and business may be resumed, without special order or notice, when the recess ends.[4] The power to adjourn from time to time during the term is said to be "one common to all courts," and, it may, as we think, be regarded as an incidental power residing in all courts unless taken from

[1] Ulmer *v.* State, 14 Ind. 52.

[2] Jaques *v.* Bridgeport, etc., Co., 43 Conn. 34. See State *v.* Williams, 48 Ark. 227.

[3] *In re* Hunter's Estate (Iowa), 51 N. W. R. 20; United States *v.* Hood (D. C.), 19 Wash. L. R. 21; Munzesheimer *v.* Fairbanks, 82 Texas, 351, S. C. 18 S. W. R. 697.

[4] State *v.* Clark, 30 Iowa, 168; State *v.* Knight, 19 Iowa, 84; Bass *v.* The State, 17 Fla. 685; Jernigan *v.* State, 17 Fla. 690; Barber *v.* State, 13 Fla. 675; Williams *v.* Moseley, 2 Fla. 304; Fraser *v.* Willey, 2 Fla. 116; Davis *v.* Fish, 1 G. Greene, 406; but see Matter of Hunter's Estate (Iowa), 51 N. W. R. 20. See, generally, State *v.* Euzebe, 42 La. Ann. 727, S. C. 7 S. R. 784; State *v.* Harkins, 100 Mo. 666, S. C. 13 S. W. R. 830; State *v.* Boardman, 64 Me. 523; Willis *v.* Elam, 28 La. Ann. 858; Harris *v.* Gest, 4 Ohio St. 469; Adicks *v.* Allison, 21 S. Car. 245; De Leon *v.* Barrett, 22 S. Car. 412; Cole County *v.* Dallmeyer, 101 Mo. 57, S. C. 13 S. W. R. 687; Johnson *v.* Pittsburgh, etc., Co., 47 Ohio St. 318, S. C. 24 N. E. R. 493; State *v.* Hawkins, 100 Mo. 666, S. C. 13 S. W. R. 830; People *v.* Sullivan, 24 N. Y. St. 579; Fannon *v.* Plummer, 30 Mo. App. 25; Jasper *v.* Schlesinger, 22 Ill. App. 637; Mapstrick *v.* Ramge, 9 Neb. 390; Hansen *v.* Bergquist, 9 Neb. 269; Cozine *v.* Hatch, 17 Neb. 694; State *v.* Todd, 72 Mo. 288; Miller *v.* Wilson, 12 Harris (Pa.), 114; Neal *v.* Shinn, 49 Ark. 227, S. C. 4 S. W. R. 771; Wayne Pike Co. *v.* Hammons, 129 Ind. 368; Pitman *v.* United States, 45 Fed. R. 159.

them by positive law. The adjournment can not, of course, be effective where it is prohibited by statute.[1]

§ 173. **Unauthorized adjournment.**—An adjournment at a time or for a period forbidden by law, renders the proceedings erroneous in cases where there is a direct attack and an objection is properly interposed and saved. This much is clear, for to this extent the authorities are harmonious. But when we get beyond this point there is conflict and confusion. Some of the courts hold that where there is an unauthorized adjournment, jurisdiction is lost and subsequent proceedings void.[2] Other cases take a different view of the question.[3] Irregular adjournments are, in any view of the subject, to be discriminated from those that are entirely unauthorized, and it seems to us, that some of the courts have fallen into error because of the failure to make the proper discrimination. Where there is an error or mere irregularity, the proceedings ought not, as we believe, to be held ineffective upon a collateral nor upon a direct attack, unless the error or irregularity is an influential one, materially prejudicing the rights of the complaining party. If the adjournment is unauthorized in the strict sense, that is, in the sense of being prohibited, there is room for debate as to

[1] *Ex parte* Juneman, 28 Texas App. 486, S. C. 13 S. W. R. 783; Grimmett *v.* Askew, 48 Ark. 151; State *v.* Williams, 48 Ark. 227, S. C. 2 S. W. R. 843.

[2] Ruhland *v.* Supervisors, 55 Wis. 664, S. C. 13 N. W. R. 877; Ruhland *v.* Jones, 55 Wis. 673, S. C. 13 N. W. R. 689; White *v.* Mandeville, 72 Ga. 705, 707. See, however, Taylor *v.* Wilkinson, 22 Wis. 40; Lininger *v.* Glenn, 33 Neb. 187, S. C. 49 N. W. R. 1128; Gould *v.* Loughran, 19 Neb. 392, S. C. 27 N. W. R. 397; Crandall *v.* Bacon, 20 Wis. 671, S. C. 91 Am. Dec. 451; Grace *v.* Mitchell, 31 Wis. 533, 536; Stromberg *v.* Esterly, 62 Wis. 632, S. C. 22 N. W. R. 864; Manufacturing Co. *v.* Donahoe, 49 Ark. 318, S. C. 5 S. W. R. 342; Fales *v.* Goodhue, 25 Me. 423; State *v.* Castle, 44 Wis. 670, 675; Boller *v.* Mayer, 8 Jones & Spen. (N. Y.) 523, 527; Peck *v.* Andrews, 32 Barb. 445; Grace *v.* Mitchell, 31 Wis. 533.

[3] Jennerson *v.* Garvin, 7 Kan. 136, 139; Leach *v.* Pillsbury, 18 N. H. 525; Hard *v.* Shipman, 6 Barb. 621; Hawes *v.* Hathaway, 14 Mass. 233; Anderson *v.* Gray, 134 Ill. 550, S. C. 25 N. E. R. 843; Rigney *v.* Coles, 6 Bosw. (N. Y. Super.) 479; Smith *v.* Whittier, 9 N. H. 464, 466; Barnes *v.* Badger, 41 Barb. 98; Central Iowa, etc., Co. *v* Piersol, 65 Iowa, 498, S. C. 22 N. W. R. 648; *In re* Edwards, 35 Kan. 99, S. C. 10 Pac. R. 539; *Ex parte* McGehan, 22 Ohio St. 442; McGuire *v.* Wallace, 109 Ind. 284, S. C. 10 N. E. R. 111.

whether it is or is not void, and if void, whether consent can conclude the parties.

§ 174. **The interim created by adjournments in term—Vacation.**—In some of the decided cases the interim between the day an adjournment is ordered and the day to which the adjournment is made is regarded as a vacation.[1] This doctrine is one of importance, since the general rule is that what is done by the court as a court must be done in term.[2] It is true that some judicial acts may be performed by a judge in vacation, but in strictness the acts of the court must be performed during term, and not in vacation. Where the statute expressly provides that judgments may be rendered in vacation by consent, judgments so rendered are held to be valid and effective.[3] Some of the cases discriminate between ministerial and judicial acts, and adjudge that ministerial acts may be effectively performed in vacation, but that strictly judicial acts can only be effective in term time. It is difficult for us to discover any solid foundation for the distinction the cases make, for if the act is really the act of the court it is necessarily judicial, and, if judicial, must be done in term. We do not, of course, im-

[1] Conkling *v.* Ridgely, 112 Ill. 36; First National Bank *v.* Daly, 34 Ill. App. 173.

[2] Robinson *v.* Ferguson, 78 Ill. 538, 541; Campbell *v.* Chandler, 37 Tex. 32; *Ex parte* Ireland, 38 Tex. 344; Wicks *v.* Ludwig, 9 Cal. 173; Norwood *v.* Kenfield, 34 Cal. 329; Domingues *v.* Domingues, 4 Cal. 186; McDowell *v.* Jones, 58 Ala. 25, 35; Withers *v.* Fuller, 30 Gratt. 547; State *v.* Roberts, 8 Nev. 239; *Ex parte* Roberts, 9 Nev. 44; Haws *v.* Clark, 37 Iowa, 355; State National Bank *v.* Neel, 53 Ark. 110, S. C. 22 Am. St. R. 185; Garlick *v.* Dunn, 42 Ala. 404. See, generally, Kinports *v.* Rawson, 29 W. Va. 487; Galusha *v.* Butterfield, 2 Scam. 227; Hernandez *v.* James, 23 La. Ann. 483; Dixon *v.* Judge, etc., 26 La. Ann. 119; Earls *v.* Earls, 27 Kan. 538; King *v.* Green, 2 Stew. 133, S. C. 19 Am. Dec. 46; Davis *v.* Fish, 1 G. Greene (Iowa), 406, S. C. 48 Am. Dec. 387; Filley *v.* Cody, 4 Col. 109; Francis *v.* Wells, 4 Col. 274; Bruce *v.* Doolittle, 81 Ill. 103; Laughlin *v.* Peckham, 66 Iowa, 121; Marshall *v.* Ravisies, 22 Fla. 583; Wight *v.* Wallbaum, 39 Ill. 554; Bates *v.* Gage, 40 Cal. 183; Gregg *v.* Cooke, 1 Peck. (Tenn.) 82; Le Grange *v.* Ward, 11 Ohio, 257; Herndon *v.* Hawkins, 65 Mo. 265.

[3] Roy *v.* Horsley, 6 Ore. 382, S. C. 25 Am. R. 537; Hervey *v.* Edmunds, 68 N. Car. 243; Morrison *v.* Citizens' Bank, 27 La. Ann. 401; *Ex parte* Bennett, 44 Cal. 84. See, generally, People *v.* O'Neil, 47 Cal. 109; Phelan *v.* Ganebin, 5 Col. 14.

pugn the soundness of the doctrine that ministerial acts of ministerial officers may be performed in vacation as well as in term, but we can not yield assent to the assumption that the act of a court is ministerial. It seems to us that when the tribunal takes action, and takes it as a court, it can not be said to act ministerially. The courts which proceed upon the theory that some of the acts of a court may be ministerial, hold that while a judgment can not be given or a decision made in vacation, the judgment may be entered in vacation.[1] If the doctrine is confined to the mere act of the clerk in recording or entering the judgment, no fault can justly be found with it; but when it is extended so far as to embrace the action of the court, it merits criticism. It has been held that a judgment given in term is void if entered in vacation without having been inspected by the judge.[2]

§ 175. **Continuous session.**—As we have shown in a former paragraph, the common law regarded a term of court as one day—the first day of the term—and while that doctrine does not prevail as fully as it did in the past, yet its influence is still felt. Under the influence of the rule mentioned the courts still regard a term as continuous although it may be broken by adjournment from time to time, and a long interval elapse between the time the order of adjournment is made and the convening of the court pursuant to the order of adjournment. When the term is regularly opened it continues until adjourned, by operation of law or the order of the judge or judges.[3] Where there is an adjourning order a vacation may exist, but upon the convening of the session pursuant to the order, the term is open, and rulings or judgments made or given may be modified or changed as if there had been no interim caused by the adjournment.[4]

[1] Iliff *v.* Arnott, 31 Kan. 672; Sieber *v.* Frink, 7 Col. 148; Earls *v.* Earls, 27 Kan. 538; Manitowoc County *v.* Sullivan, 51 Wis. 115.

[2] Mitchell *v.* St. John, 98 Ind. 598. See Wilson *v.* Rodewald, 61 Miss. 228.

[3] People *v.* Central City Bank, 53 Barb. 412; Jasper *v.* Schlesinger, 22 Ill. App. 637.

[4] Eastman *v.* Concord, 64 N. H. 263.

§ 176. **Special terms—Generally.**—A special term is usually one appointed by the court. It is ordinarily necessary to give notice of such terms, but where there is general authority to hold special terms and the court assumes to hold one, the presumption is that the proper order was made and the notice given as the law requires. To hold otherwise would be to violate the presumption that judges obey the law, and it would, indeed, be a gross and indefensible violation of the rule that all official acts are presumed to be rightfully performed. To so hold would be to assume that the members of the court had usurped authority and disregarded the law they were appointed or elected to uphold and enforce. This would be a wide and unjustifiable departure from principle, far more so than to adjudge that ministerial officers had violated the law where no facts are established which affirmatively show a breach of duty. This we say for the reason that judicial officers are required to act with calm deliberation, to give heed to the law with scrupulous care and obey it in every particular. Where a notice or an order is essential to the regularity or validity of a special term, and a special term is held, the presumption is that the precedent acts were duly performed. The principle we have outlined is elementary and familiar.[1] If there is an absolute absence of power to hold special sessions the rule we have stated does not govern, for the reason that in such a case the question is one of power, and where there is no power there can, it is clear enough, be no valid action by any tribunal no

[1] In the case of Bank *v.* Dandridge, 12 Wheat. 64, 70, the court said: "The same presumptions are, we think, applicable to corporations. Persons acting publicly as officers of the corporation are to be presumed rightfully in office. Acts done by the corporation which presuppose the existence of other acts to make them legally operative are presumptive proofs of the latter." In another place in the same opinion it was said: "In short, we think that the acts of artificial persons afford the same presumptions as the acts of natural persons. Each affords presumptions, from acts done, of what must have preceded them, as matters of right or matters of duty." The same general doctrine was asserted in the case of Knox County *v.* Ninth National Bank, 13 Sup. Ct. R. 267, where it was said: "It is a rule of very general application that, where an act is done which can be done legally only after the performance of some prior act, proof of the latter carries with it a presumption of the due performance of the prior act."

matter how great its dignity or high its rank. We can not escape the conclusion that some of the courts have swung completely away from principle in holding, that, although there is general authority to hold special sessions or terms, the proceedings are void unless the record affirmatively shows that all was done that the law requires. So far are we from assenting to this doctrine that we assert that the sound rule is that where the record is silent the presumption is that the term or session was in all things regular and legal. We are, indeed, inclined to believe that the session or term is to be regarded as having been duly held unless the record affirmatively shows the defects which destroy its regularity. This conclusion is in close agreement with the general doctrine that a collateral attack can not prevail against a judgment unless the matter which makes the judgment void appears upon the face of the record, and, as we have elsewhere shown, with the far-reaching general rule that all presumptions and intendments will be made in favor of the proceedings of judicial tribunals, unless matters appear of record checking or breaking down the presumption that the acts of public officers are presumed to be rightfully done until the contrary is made to appear. [1]

[1] As illustrating and supporting the statements of the text, we cite cases where presumptions have been employed to support the decisions and rulings of what are commonly called inferior courts. Fox *v.* Hoyt, 12 Conn. 491, 495, S. C. 31 Am. Dec. 760; Gregory *v.* Bovier, 77 Cal. 121; Fagg *v.* Clements, 16 Cal. 389; Jolley *v.* Foltz, 34 Cal. 321; Liss *v.* Wilcoxen, 2 Colo. 85; Behymer *v.* Nordloh, 12 Colo. 352; Williams *v.* Cammack, 27 Miss. 209, S. C. 61 Am. Dec. 508; Hendricks *v.* Whittemore, 105 Mass. 28; Barber *v.* Kennedy, 18 Minn. 216; Billings *v.* Russell, 23 Pa. St. 191, S. C. 62 Am. Dec. 330; Kincaid *v.* Neall, 3 McCord, 201; Camp *v.* Woods, 10 Watts. (Pa.) 118; Farr *v.* Ladd, 37 Vt. 156; Lightsey *v.* Harris, 20 Ala. 409, State *v.* Weare, 38 N. H. 314, 317; Baizer *v.* Lusch, 28 Wis. 268, 272; State *v.* Conoly, 6 Ired. 243; Galbraith *v.* Littiech, 73 Ill. 209; Beebe *v.* Scheidt, 13 Ohio St. 406; McClelland *v.* Miller, 28 Ohio St. 488, 500; Jacobs *v.* Louisville, etc., Co., 10 Bush. 263, 269; Williams *v.* Morgan, 1 Litt. (Ky.) 167. We do not, of course, refer to the cases cited as directly declaring the doctrine of the text, but as showing the influence and power of the general presumption. It is, as we believe, inconsistent and illogical to attempt to divide a general rule, apply it to one class and deny it to another where the classes are in essence the same. If a presumption will support one ruling or one decision, it ought, in reason, to be held to support all rulings and decisions wherever

§ 177. **Special terms—Authority to order.**—It is evident that where the statute clearly and expressly prescribes the time for holding court, and, either by express words or necessary implication, excludes authority to appoint special terms, none can be held. As indicated in the preceding paragraph and elsewhere, there is a plain and radical difference between cases where there is authority to hold special sessions, and the question is as to the mode in which the authority is exercised, and cases in which there is an entire absence of authority. Where there is general authority to appoint special sessions the appellate courts generally go to great length in upholding such sessions, and will not hold them ineffective although some errors or irregularities may be shown. The rules sanctioned by most of the courts are liberal in favor of the parties insisting upon the validity of proceedings at such sessions and strict as against those who assail the proceedings. Where, as is generally the case, the question of the propriety or necessity of appointing special terms is committed to the discretion of the court, its judgment will not be disturbed unless there is a flagrant and prejudicial abuse of discretion.[1]

§ 178. **Special terms—Constitutional questions.**—In some of the cases it has been contended that judges can not be empowered to order special terms to be held. The ground upon which this contention was rested was that giving the judges such authority was a delegation of legislative power. The court,

there exists general authority to make such rulings or decisions. In the case of Hanes *v.* Worthington, 14 Ind. 320, it was said: "The contrary not appearing, we will presume that the court was regularly held and the cause properly brought to trial." The same doctrine was declared in Shirts *v.* Irons, 28 Ind. 458, 460. Asserting a similiar doctrine are the cases of Kenney *v.* Phillipy, 91 Ind. 511; Zonker *v.* Cowan, 84 Ind. 395; Wood *v.* Franklin, 97 Ind. 117, 120.

[1] Oshoga *v.* State, 3 Pinney (Wis.), 56; Oshoga *v.* State, 3 Chand. (Wis.) 57; Schrier *v.* Milwaukee, etc., Co., 65 Wis. 457; Casily *v.* State, 32 Ind. 62. In Harper *v.* State, 42 Ind. 405, 410, the court declared that the decision in Casily *v.* State, *supra*, in effect overruled the cases of Shiel *v.* Maffett, 17 Ind. 316, and Slaughter *v.* Gregory, 16 Ind. 250. See Commonwealth *v.* Graves, 18 B. Monr. (Ky.) 34; Scheland *v.* Erpelding, 6 Oregon, 258; State *v.* Judge, etc., 11 La. Ann. 66; Hanna *v.* Phelps, 7 Ind. 21.

however, denied the validity of the contention and held that there was no delegation of legislative authority.[1] In this the court was clearly right. Judicial power embraces much more than the authority to give judgments or render decisions.[2] It embraces all acts relating to matters of procedure and connected with the administration of justice where such matters are not ministerial or executive in their character. Courts could not effectively discharge their duties if their authority were rigidly confined to the conduct of trials, the hearing of causes and the rendition of judgments or decrees. It is manifest that as to the matter of holding adjourned or special terms it is legitimate and appropriate to confer upon them comprehensive powers, since the determination of whether such terms shall or shall not be held is intrinsically a judicial question and the subject in its general scope a judicial one. Of much more doubtful soundness is the case which holds that the governor of the State may appoint special terms of court.[3] It seems to us that in vesting the governor with that authority the fundamental principle, which our national and State constitutions sanction and confirm, that the powers of the government shall be kept separate and distinct, is violated. The chief executive officer of a State, in assuming to fix the times for holding special sessions of the court does, necessarily, determine questions of a purely judicial nature and does in a great measure take upon himself to determine what the business of the court requires. This he can not do without controlling the affairs of the judicial department, and this, as we believe, he can not be empowered to do. In our judgment it is only the duly elected or appointed judges of the courts who can determine when the business will require a special term or when a special term can be held without prejudice to the rights of litigants having business in regular terms. We believe further that if it be conceded that the power is not a judicial one, it must be

[1] Messenger *v.* Broom, 1 Pinney (Wis.), 630.

[2] In the matter of Cooper, 22 N. Y. 67; Striker *v.* Kelly, 2 Denio, 323; State *v.* Noble, 118 Ind. 350, 359.

[3] State *v.* Ketchey, 70 N. Car. 621.

regarded as legislative, and if legislative that it can not be delegated.

§ 179. **Business of special terms.**—In jurisdictions where the law makes provision for the business that shall be transacted at a special term and leaves the court no discretion the court can transact such business only as the statute prescribes. Thus when a statute provides that a motion shall be made at a regular term it can not be made at a special term.[1] We suppose, however, that if the parties expressly or impliedly agree that the motion may be made at a special term they would not be permitted to subsequently aver that it was made at the wrong term. Where the statute does not restrict the court nor prescribe what business shall be transacted, the term is to be regarded as open to all pending business.[2] It has been held that a special term is not part of the regular term,[3] and that actions may be brought at such terms,[4] but these matters are largely matters of statutory regulation. The order may control the business where the court has authority to direct what business shall be transacted.[5]

§ 180. **Adjournment—Reasons for need not be assigned.**—It is always presumed in the absence of countervailing facts that a court acting within the general sphere of its authority has proceeded legally and regularly, and upon this comprehensive principle rests the doctrine that a court in ordering an adjournment, or in ordering a special or adjourned term, is not required to assign reasons for its action.[6] It is reasonable to

[1] Garner *v.* Carroll, 7 Yerg. (Tenn.) 365; Stagg *v.* State, 3 Humph. (Tenn.) 372.

[2] Hall *v.* State, 3 Lea (Tenn.) 552; Hall *v.* Mount, 3 Cold. (Tenn.) 395.

[3] Garner *v.* Carroll, 7 Yerg. (Tenn.), 365.

[4] Knight *v.* Bamberger, 19 Ind. 91.

[5] Brown *v.* Newby, 6 Yerg. (Tenn.) 395. See, generally, Buck *v.* Beekly, 45 Ill. 100; Murphy *v.* Barlow, 5 Ind. 230; O'Kelly *v.* Territory, 1 Oregon, 51; Friar *v.* State, 3 How. (Miss.) 422; Sharp *v.* Pike, 5 B. Monr. (Ky.), 155; Mattingly *v.* Darwin, 23 Ill. 56; Lewin *v.* Dille, 17 Mo. 64; Reams *v.* Kearns, 5 Cold. (Tenn.) 217; Wise *v.* State, 34 Ga. 348; Rawson *v.* Powell, 36 Ga. 255.

[6] Casily *v.* State, 32 Ind. 62; Harper *v.* State, 42 Ind. 405; Shiel *v.* Maffett, 17 Ind. 316; Cass *v.* Krimbill, 39 Ind. 357.

assume that the court had sufficient reason for its action. The absurdity of any other rule is manifest. It is, of course, necessary to assign reasons where a positive statute so commands, but where there is no such command it need not be done although the statute declares what reasons shall be sufficient to warrant an adjournment from time to time in term, or to warrant the holding of special or adjourned terms. Where the statute provides what reasons will justify the holding of special or adjourned terms it is presumed that such reasons existed.

§ 181. **Adjourned and special terms—Discretionary power to order.**—Where a court of original jurisdiction is invested with discretionary power to order the holding of special or adjourned terms its exercise of that power is not subject to review. It would require clear and strong words to make a power to order special or adjourned terms any other than one of discretion. In the nature of things the court of original jurisdiction must be clothed with ample discretion in such matters, and, presumptively, at least, the legislature must be taken to have intended to commit to them a wide and comprehensive discretion. The exercise of a purely discretionary power is not error in the true sense of the term, although it may not have been wisely or prudently exercised.[1] An abuse of discretion, when clearly shown, may constitute material error, but appellate tribunals are reluctant to overthrow the judgments of *nisi prius* courts upon that ground. It is a doctrine running through all the law, applicable to ministerial as well as to judicial officers, that where a discretion is committed to a tribu-

[1] Lawrence *v.* Farley, 73 N. Y. 187; Howell *v.* Mills, 53 N. Y. 322; Martin *v.* Windsor Hotel Co., 70 N. Y. 101; Johnson *v.* Swayze (Neb.), 52 N. W. R. 835; Minnoch *v.* Eureka, etc., Co. (Mich.), 51 N. W. R. 367; Lake *v.* Sweet, 63 Hun, 636, S. C. 18 N. Y. S. 342; Adams *v.* Main, 3 Ind. App. 232, S. C. 29 N. E. R. 792; Gordon *v.* Reynolds, 114 Ill. 118, S. C. 28 N. E. R. 455; People *v.* Wayne Circuit Judge, 41 Mich. 727, S. C. 49 N. W. R. 925; Sinclair *v.* Hollister, 16 N. Y. S. 529; Schmohl *v.* Fusco, 16 N. Y. S. 862; Matheson *v.* Grant, 2 How. (U. S.) 263, 279; Marine Ins. Co. *v.* Hodgson, 6 Cranch. 206; Mellish *v.* Richardson, 7 B. & C. 819; *Ex parte* Strong, 20 Pick. 484; Carpenter *v.* Bristol, 21 Pick. 258; Powell's Appellate Proceedings, 195; Elliott's Appellate Procedure, §§ 597, 598, 599, 600.

nal, no matter what its rank, no other tribunal will assume to exercise it.[1] To so do would, it is evident, be a flagrant usurpation.

§ 182. **Terms of court—Judicial notice.**—As the times for holding terms of court are prescribed by law, it is no more than yielding obedience to familiar and elementary principles to adjudge that judicial notice of the times fixed by law will be taken by other courts of the same jurisdiction.[2] The principle referred to requires it to be held, as it is, that notice will be taken *ex officio* of the beginning and duration of terms.[3] It is a necessary consequence of the principles stated that it will be determined by judicial notice whether the acts of the court have or have not been rightfully done during term. The rules we have stated can readily and easily be applied to regular terms of court, but they can not be applied, without qualification, to special terms, or adjourned terms, held pursuant to special orders or notices. We suppose it to be clear that courts do not *ex officio* take notice of special orders or notices of other tribunals although they will, of course, take judicial notice of their authority to make such orders or issue such notices. When it is ascertained that authority exists to make such orders or issue such notices, and convene adjourned or special terms, it will be presumed, the contrary not appearing, that the adjourned or special term was held according to law.[4] The general principle underlying

[1] Goszler *v.* Georgetown, 6 Wheat. 593; State *v.* City of Newark, 48 N. J. Law, 101; Weaver *v.* Templin, 113 Ind. 298; City of Richmond *v.* Davis, 103 Ind. 449; Smith *v.* Corporation of Washington, 20 How. (U. S.) 135; Davis *v.* Mayor, 1 Duer, 451; 2 Dillon's Munic. Corp. (3d. ed.), 686; Elliott on Roads and Streets, pp. 276, 297, 375, 664.

[2] Lindsay *v.* Williams, 17 Ala. 229; State *v.* Hammett, 7 Ark. 492; Morgan *v.* State, 12 Ind. 448; Gilliland *v.* Sellers, 2 Ohio St. 223; Dorman *v.* State, 56 Ind. 454; Pugh *v.* State, 2 Head. (Tenn.) 227; Buckinghouse *v.* Gregg, 19 Ind. 401; Williams *v.* Hubbard, 1 Mich. 446; McGinnis *v.* State, 24 Ind. 500; McCrory *v.* Anderson, 103 Ind. 12; Carmody *v.* State, 105 Ind. 546; Clapp *v.* Bowman, 22 Neb. 198, S. C. 34 N. W. R. 162.

[3] Rodman *v.* Rodman, 54 Ind. 444; McGinnis *v.* State, 24 Ind. 500; Carlisle *v.* Gaar, 18 Ind. 177; Bethune *v.* Hale, 45 Ala. 522; Rodgers *v.* State, 50 Ala. 102; Simms *v.* Todd, 72 Mo. 288; Spencer *v.* Curtis, 57 Ind. 221; Ellsworth *v.* Moore, 5 Iowa, 486.

[4] Carlisle *v.* Gaar, 18 Ind. 177; Porter *v.* State, 2 Ind. 435. We have elsewhere considered the subject touched

the doctrine we have stated goes so far as to make it the duty of the courts to take judicial notice of the judges and general officers of courts of the same State, and of their ordinary duties.[1] We are speaking of what one court will take judicial notice of concerning the action of another and different court, and not of what a court will notice *ex officio* in its own records.[2]

§ 183. **Judgment of the court as to the regularity of its session—Effect of.**—Where a court having a general authority to hold a session upon its own order, or upon notice, does hold a session, thus impliedly adjudging that it has the right and authority to hold such a session, its judgment upon the question should be regarded as conclusive against a collateral attack.[3] This conclusion is supported by the decisions in closely analogous cases, and is in accordance with principle.[4] There is, it is evident, a marked difference between cases where there is no general authority to hold sessions at other times than those fixed, definitely and certainly, by positive law, and cases

upon in the closing sentence of the text.

[1] Grusenmeyer *v.* City of Logansport, 76 Ind. 549; La Plante *v.* Lee, 83 Ind. 155.

[2] People *v.* Bloedel, 16 N. Y. Supp. 837; Campbell *v.* West, 86 Cal. 197, S. C. 24 Pac. R. 1000; White *v.* Rankin, 90 Ala. 541, S. C. 8 S. R. 118; Hancock *v.* Worcester, 62 Vt. 106, S. C. 18 Atl. R. 1041; *In re* Gorry, 48 Hun, 29, S. C. 15 N.Y.St. R.315; Walcott *v.* Wells (Nev.), 9 Law. Rep. Anno. 59, S. C. 24 Pac. R. 367; State *v.* Barrett, 40 Minn. 65, S. C. 41 N. W. R. 459; United States *v.* Lehman, 39 Fed. R. 49; State *v.* Wright, 16 R. I. 518, S. C. 17 Atl. R. 998; Upton *v.* Paxton, 72 Iowa, 295, S. C. 33 N. W. R. 773; Cannon *v.* Cannon, 66 Texas, 682; Buell *v.* State, 72 Ind. 523; Hipes *v.* State, 73 Ind. 39.

[3] Van Fleet Collateral Attack, § 1. The principle we assert was thus stated in Bouldin *v.* Ewart, 63 Mo. 330: "The very fact of holding a court there necessarily implied an assertion of the right to hold it. It was a *de facto* court, and its proceedings were not void even if it should be conceded that its session was at a place unauthorized by law." The general doctrine was applied to a case where a justice tried a cause in a township where he had no jurisdiction. Rogers *v.* Loop, 51 Iowa, 41. Many other cases assert a similar doctrine. King *v.* Inhabitants, 4 T. R. 596; Jones *v.* The Church, etc., 15 Neb. 81.

[4] See, generally, Venable *v.* White, 2 Head. (Tenn.) 582; Henslie *v.* State, 3 Heisk. (Tenn.) 202; Check *v.* Merchants' Bank, etc., 9 Heisk. 489; Smurr *v.* State, 105 Ind. 125, 131; Brewer *v.* State, 6 Lea, 198, 203; Walcott *v.* Wells (Nev.), 9 Law. R. Anno. 59; White *v.* Fleming, 114 Ind. 560; Anderson *v.* Claman, 123 Ind. 471.

where there is a general authority to hold sessions or terms upon notice, or upon the existence of designated facts. In the one case there is a question for the judicial consideration and judgment, in the other there is none. Where there is a question to be decided and a decision is given upon it, there is a judgment upon a matter in its nature jurisdictional, and such a decision is, according to principle and authority, effective against a collateral attack. It is held in all the well considered cases that where a court, inferior or superior, is required to ascertain and decide that facts essential to jurisdiction exist, its decision can not be successfully impeached in a collateral proceeding.[1] The principle which these cases establish is the same as that involved in the question we are considering, and there is every reason why it should be held to control it, and no valid reason why its application to such a question should be denied. To break a great principle into fragments, giving it effect in some cases and denying it in others where the cases

[1] Commissioners of Knox County *v.* Aspinwall, 21 How. (U. S.) 539; Town of Colona *v.* Eaves, 92 U. S. 484; Moran *v.* Miami County, 2 Black (U. S.), 722; Mercer County *v.* Hacket, 1 Wall. 83; Supervisors *v.* Schenck, 5 Wall. 772; Meyer *v.* Muscatine, 1 Wall. 384; Royal British Bank *v.* Turquand, 6 Ell. & Bl. 327; Evansville, etc., Co. *v.* City of Evansville, 15 Ind. 395; Tucker *v.* Sellers, 130 Ind. 514; Alexander *v.* Gill, 130 Ind. 485, 30 N. E. R. 525, 527; McEneney *v.* Town of Sullivan, 125 Ind. 407, 412; Montgomery *v.* Wasem, 116 Ind. 343, 351; Sims *v.* Gay, 109 Ind. 501, 505; Commissioners *v.* Bolles, 94 U. S. 104; Henline *v.* People, 81 Ill. 269; Chicago, etc., Co. *v.* Chamberlain, 84 Ill. 333; Roderigas *v.* East River, etc., Co., 63 N. Y. 460, S. C. 20 Am. R. 555; Miller *v.* Brinkerhoff, 4 Denio, 118; Staples *v.* Fairchild, 3 N. Y. 41; People *v.* Sturtevant, 9 N. Y. 263; Skinnion *v.* Kelley, 18 N. Y. 355; Bumstead *v.* Read, 31 Barb. 661; Goodwin *v.* Sims, 86 Ala. 102, S. C. 11 Am. St. R. 21; Wyatt *v.* Rambo, 29 Ala. 510, S. C. 68 Am. Dec. 89; Ela *v.* Smith, 5 Gray, 121, S. C. 66 Am. Dec. 356; Bonsall *v.* Isett, 14 Iowa, 309; Ryan *v.* Varga, 37 Iowa, 78; Koehler *v.* Hill, 60 Iowa, 543; Martin *v.* Mott, 12 Wheat. 19; Vanderheyden *v.* Young, 11 Johns. 150; Wanzer *v.* Howland, 10 Wis. 8; Angell *v.* Robbins, 4 R. I. 493; Agry *v.* Betts, 12 Me. 415; Lowe *v.* Dore, 32 Me. 27; Waterhouse *v.* Cousins, 40 Me. 333; People *v.* Hagar, 52 Cal. 171. See, generally, Quayle *v.* Missouri, etc., Co., 63 Mo. 465; Van Steenbergh *v.* Bigelow, 3 Wend. 42; Cauldwell *v.* Curry, 93 Ind. 363; Wood *v.* Wilson, 4 Hous. (Dela.) 94; Town of Cherry Creek *v.* Becker, 123 N. Y. 161, S. C. 25 N. E. R. 369; Ayres *v.* Lawrence, 63 Barb. 454, 456; Quinlan *v.* Myers, 29 Ohio St. 500; Collins *v.* Bennett, 46 N. Y. 490; Hallock *v.* Dominy, 69 N. Y. 238; Lange *v.* Benedict, 73 N. Y. 12.

are the same in essence, deforms the system of law, produces confusion and leads to evil results in more ways than one. Uniformity is a legal virtue and diversity a legal vice. The foundation principle of the cases to which we have referred is this: Where there is a general authority over a class of cases there is power to decide whether the right to proceed exists in the particular case,[1] and to decide this, it must also be decided that the tribunal is authorized to make the decision. It is necessarily assumed at the very outset that the court is in a position to entertain the question and give judgment upon it, since, if it is not in that position it can take no action what-

[1] In the case of Roderigas *v.* The East River, etc., Co., 63 N. Y. 460, S. C. 20 Am. R. 555, the court said: "When a statute prescribes that some fact must exist before jurisdiction can attach in any court, such fact must exist before there can be jurisdiction, and the court can not acquire jurisdiction by erroneously deciding that it exists, and that it has jurisdiction. But where general jurisdiction is given to a court over any subject, and that jurisdiction depends in the particular case, upon facts which must be brought before the court for its determination upon evidence, and when it is required to act upon such evidence, its decision upon the question of its jurisdiction is conclusive until reversed, revoked or vacated." The same court said in the case of Porter *v.* Purdy, 29 N. Y. 106, S. C. 86 Am. Dec. 283: "When, in special proceedings in courts or before officers of limited jurisdiction, they are required to ascertain a particular fact, or to appoint persons to act in such proceedings, having particular qualifications or occupying some peculiar relation to the parties or subject, such acts, when done, are in the nature of adjudications, which, if erroneous, must be corrected by a direct proceeding for that purpose; and if not so corrected, the subsequent proceedings which rest upon them are not affected, however erroneous such adjudications may be." In a recent work the principle underlying the cases to which we have referred is carried to its legitimate logical results and a just application of the general doctrine correctly made. In the work to which we refer, it is said: "And as no one would think of holding a judgment of the court of last resort void if its jurisdiction were debatable or even colorable, the same rule must be applied to the judgments of all judicial tribunals. This is the true theory of judicial action when viewed collaterally. If any jurisdictional question is debatable or colorable, the tribunal must decide it; and an erroneous conclusion can only be corrected by some proceeding provided by law for so doing, commonly called a direct attack." Van Fleet Collateral Attack, § 1, p. 2. This author at another place, speaking of an assumption that no court can pass upon its own organization, says: "But that begs the question. Each court at each step it takes has to decide that it still has a lawful organization and the lawful right to proceed." *Ibid*, § 21, p. 34. See, also, § 31, and authorities cited in note.

ever. The initial step in every instance is the decision of the right to entertain the particular case, and decide upon facts in their nature jurisdictional. Whether the decision is expressed or implied, there is, in every instance, a decision of the right and authority to hold the term or session in which the particular matter is litigated. Where there is general authority over a general class of cases, or a general subject, and a decision is made in one of the cases of the general class, or in one of the cases falling within the scope of the general subject, there is always a judgment by a tribunal having general authority, and such a judgment is, as we believe, not subject to impeachment in a collateral proceeding.[1] The correctness or soundness of the judgment of a tribunal upon the question whether facts or

[1] In Bittain *v.* Kinnaird, 1 Brod. & Bing. (Eng. C. P. R.) 432, Dallas, C. J., said: "The magistrate, it is urged, could not give himself jurisdiction by finding that to be a fact which did not exist. But he was bound to inquire as to the fact, and when he has inquired, his conviction is conclusive of it." This is an expression of the principle we have endeavored to state and enforce, for our fundamental proposition is that where there is general authority to make an inquiry, or to ascertain whether certain facts or certain conditions exist, there is an implied authority to decide, and where there is a decision it affirms necessarily and conclusively as against a collateral assault, that the inquiry has been made and the requisite facts or conditions found to exist. We concur in the views of the author so far as they relate to the point under immediate mention, from whom we quote, who thus expresses his opinion:

"By assuming to act at all, or to investigate any case, the tribunal determines that a valid, constitutional law authorizes its own organization, and that it has been duly organized; that the judge or judges presiding, and the other officers present, are the proper ones, and duly qualified to act, and that by and through them the corporate tribunal may lawfully act; and that the time and place of sitting are authorized by law. By assuming to order process for the defendant, or to pass upon, or to ratify process already issued, the tribunal determines that a valid constitutional law gives it jurisdiction over the subject-matter of the particular case presented, and by assuming to call or default the defendant, it determines that process, lawful in form, has been lawfully served upon him by the proper officer or person at the proper time and place. By allowing an appearance, it determines that the person so appearing has the lawful right to do so. All questions concerning the organization of the tribunal, the time and place of its sitting, its jurisdiction over the subject-matter, its right to issue process for the defendant, the validity of the process issued and service made, are questions of law that must be decided in each case." Van Fleet Collateral Attack, p. 2.

conditions exist, authorizing it to convene and hold a term or session is of no importance where the assault is collateral and not direct, although it may be very important in the case of a direct attack. The power to decide necessarily involves the power to decide wrong as well as right,[1] and if there be power to decide, the nature of the question can not affect the exercise of the power, for, the power existing, it covers and embraces all questions, the organization of the tribunal and its right to hold a particular session or term as well as all others lying within the sphere of the tribunal's general authority. The principle that the decision of a tribunal upon its right and authority to proceed is conclusive is an old one, older, indeed, than any American court. It is essential to the due administration of justice, to the protection of courts and officers, to the peace and repose of society, and to the security of titles to property. Its wise and salutary practical effect, and its intrinsic merits are such as to require the courts of justice to extend and enlarge its operation rather than to limit or restrict its effect and force.

[1] Snelson *v.* State, 16 Ind. 29; Chicago, etc., Co. *v.* Sutton, 130 Ind. 405, 412; Coleman *v.* Floyd, 131 Ind. 330, 334; Ely *v.* Board, 112 Ind. 361, 368; Young *v.* Sellers, 106 Ind. 101; Voorhees *v.* Jackson, 10 Pet. 449; Elliott *v.* Piersol, 1 Peter, 328, 340; Million *v.* Board, 89 Ind. 5; Hunt *v.* Hunt, 72 N. Y. 217. In a work of acknowledged authority it is said: "There is nothing absurd or illogical in holding that a body of limited powers may determine whether the questions which are brought before it admit of the exercise of its powers. If limitation of power necessarily excluded the right of ultimate decision, nothing could be decided finally under governments, which, like those of this country, are throughout, and without exception, limited." 1 Smith's Leading Cases (8th Am. ed.), 1116. The case of Ballard *v.* Thomas, 19 Gratt. 14, 20, was one wherein the levy of a tax assessment by the county court came in question, the contention of the appellant being, as it is here, that the members of the county court were not properly summoned. Answering this contention the court said: "When the court is about to lay the county levy, the first question to be determined is, whether the justices have all been summoned, or, if they have not been summoned, whether a majority of them is present. And when the court proceeds to lay the levy, it in effect determines these questions, and decides that the justices have been summoned, or that a majority of them is present. The propriety of that decision can not be called in question in any collateral proceeding."

§ 184. **Presumption as to regularity of organization.**—Where a court assumes to proceed in a cause belonging to a class over which its authority extends, the presumption is that it rightfully proceeds. This presumption extends to every question it is necessary to decide, and, hence, extends to the question of the legality or regularity of the organization as well as the regularity of the time and place of holding the term or session.[1] Where there is no ground for the presumption it can not, of course, be indulged. If it affirmatively appears, from the record, that there was an entire absence of authority to proceed, or that the term or session was held at a time prohibited by law, there is no ground upon which a presumption can be rested.

§ 185. **Relation of courts to other governmental departments.**—The courts, as the repositories of one of the great elements of sovereignty, constitute an important factor in the system of checks and balances which enter so largely and so potently into our governmental structure. It has been said by some of the courts and writers that the division and distribution of governmental powers is theoretical rather than actual, but from this doctrine we altogether dissent. It is true that the lines which separate the departments are often shadowy and indistinct, so that it is exceedingly difficult to trace them with precision or accuracy. But there is a borderland, and, until a certain line is neared, it is a wide one. The fact that it is sometimes difficult to determine where one right or one power begins and another right or power ends is very far from proving that there is no dividing line. There are numerous cases—a vast majority, indeed—where the difficulty of marking and establishing differences between resembling things or rights, whether springing out of contracts or torts, is very great and exceedingly perplexing, yet there can be no doubt that differences exist. The strong and wise judgments of the courts, beginning in the early years of the republic, demonstrate the

[1] Myers *v.* Mitchell (S. Dak.), 46 N. W. R. 245; Cook *v.* Skelton, 20 Ill. 107; Porter *v.* State, 2 Ind. 435; Shircliff *v.* State, 96 Ind. 369; McCullough *v.* Moore, 9 Yerg. (Tenn.) 305.

truth of the conclusion that there is an actual separation between the governmental departments, and the practical effect of these decisions has been of incalculable good to the country. Doubts that may have formerly existed as to whether the separation between the various departments of government was speculative and not real are completely dispelled by the decisions upon the subject, for there is no substantial conflict in the modern cases upon the general question, the courts, on the one hand, sturdily asserting their independence,[1] and, on the other, stoutly maintaining that of the executive[2] and legislative departments.[3] It is no fanciful line which keeps the courts within

[1] District of Columbia *v.* Hutton, 143 U. S. 18; Lent *v.* Tillson, 140 U. S. 316; *In re* Washington Street, 132 Pa. St. 257, S. C. 7 Law R. Anno. 193, 19 Atl. R. 219; Meyer *v.* Berlandi, 1 Law R. Anno. 777, S. C. 40 N. W. R. 513; *Re* Application Pacific, etc., Commission, 32 Fed. R. 241; Plumer *v.* The Board, 46 Wis. 163, S. C. 50 N. W. R. 416; City of St. Joseph *v.* Farrell (Mo.), 17 S. W. R. 497; Wyatt *v.* People, 16 Colo. 252, 28 Pac. R. 961; Clarkson *v.* Ryan, 17 Canada S. C. 251; Perkins *v.* Corbin, 45 Ala. 103; *In re* Pacific, etc., Co., 32 Fed. R. 241, 267; Miller *v.* Horton, 152 Mass. 540, S. C. 23 Am. St. R. 850; State *v.* Armstrong, 3 Sneed (Tenn.), 634; Greenough *v.* Greenough, 11 Pa. St. 489; Turner *v.* Althaus, 6 Neb. 54; Smythe *v.* Boswell, 117 Ind. 365; Smith *v.* Myers, 109 Ind. 1; Langenberg *v.* Decker, 131 Ind. 471, S. C. 16 Law R. Anno. 108, S. C. 31 N. E. R. 190.

[2] United States *v.* Blaine, 139 U. S. 306; Adams *v.* Couch (Ok.), 26 Pac. R. 1009; State *v.* Abbott, 41 La. Ann. 1096, S. C. 6 So. R. 805; Sioux City, etc., Co. *v.* United States, 34 Fed. R. 835; Hope *v.* Board, 42 La. Ann. 647, S. C. 7 So. R. 706; United States *v.* Raum, 135 U. S. 200; People *v.* Governor, 29 Mich. 320; Bates *v.* Taylor, 87 Tenn. 319, S. C. 28 Am. Law Reg. 341; Hawkins *v.* Governor, 1 Ark. 570; State *v.* Governor, 25 N. J. L. 331; People *v.* Bissell, 19 Ill. 229; Dennett, Petitioner, 32 Me. 508; Mauran *v.* Smith, 8 R. I. 192; People *v.* Yates, 40 Ill. 126; Pacific Ry. Co. *v.* Governor, 23 Mo. 353; State *v.* Warmoth, 22 La. Ann. 1; Rice *v.* Austin, 19 Minn. 103; Appeal of Hartranft, 85 Pa. St. 433; State *v.* Drew, 17 Fla. 67; People *v.* Cullom, 100 Ill. 472. *Contra*, Cotten *v.* Ellis, 7 Jones (N. Car.), 545; Bonner *v.* State, 7 Ga. 473; State *v.* Governor, 5 Ohio St. 528; Martin *v.* Ingham, 38 Kan. 641, S. C. 17 Pac. R. 162; Hovey *v.* State, 127 Ind. 588.

[3] State *v.* Kolsem, 130 Ind. 434, S. C. 14 Law R. Anno. 566, 29 N. E. R. 595; Wells *v.* Missouri, etc. (Mo.), 15 Law R. Anno. 847, S. C. 19 S. W. R. 530; People *v.* McFadden, 81 Cal. 489; McGregor *v.* Baylies, 19 Iowa, 43; Hovey *v.* Foster, 118 Ind. 502, S. C. 21 N. E. R. 39; People *v.* Creiger, 138 Ill. 401, S. C. 28 N. E. R. 812; Wilson *v.* Chicago, etc., 133 Ill. 443; Wichita *v.* Burleigh, 36 Kan. 34; Gentile *v.* State, 29 Ind. 409; Evansville, etc., *v.* State, 118 Ind. 426, 433, S. C. 4 Law R. Anno. 93; Brown *v.* Denver, 7 Colo. 305; Carpenter *v.* People, 8 Colo. 116; State *v.* Boone County, etc., 50 Mo. 317;

their own domain, nor are the boundaries which separate the other departments merely imaginary ones. The rights which have been enforced and protected by the courts upon the principle that the powers of government are distributed to independent departments were actual rights and not speculative ones, so that the consequences resulting from the principle are in the strictest sense real and substantial. The position of the courts must necessarily be one of independence and not of subordination or of co-ordination, otherwise they could not, as they have done time and time again, control the action of the legislative and executive departments in instances where the officers of those departments have transcended their constitutional power.

§ 186. **Rules—Definition.**—Rules of a court are regulations of a definite character, and, in a restricted sense, are minor laws.[1] They are not laws in the general sense of the term, but they are laws in the sense of governing the practice of the tribunal that frames and promulgates them. The court is bound by them as well as the parties.[2] Rules are more than orders of court made with reference to special cases, and not intended to govern the conduct of the business of the tribunal generally. Courts can not make laws governing primary rights, but they

State *v.* New Madrid, etc., 51 Mo. 82; Hall *v.* Bray, 51 Mo. 288; State *v.* Hitchcock, 1 Kan. 178, S. C. 81 Am. Dec. 503; Beach *v.* Leahy, 11 Kan. 23; Davis *v.* Gaines, 48 Ark. 370; Stockton *v.* Powell (Fla.), 15 Law R. Anno. 42, S. C. 10 So. R. 688; Edmunds *v.* Herbrandson, 2 N. Dak. 270, 14 Law R. Anno. 725, S. C. 50 N. W. R. 970; United States *v.* Des Moines, etc., Co., 142 U. S. 510; Louisville, etc., Co. *v.* Jordan, 16 Law R. Anno. 251, 11 So. R. 111; Territory *v.* Ah Lim, 1 Wash. 156, S. C. 9 Law R. Anno. 395; Williams *v.* Nashville, 89 Tenn. 487, S. C. 15 S. W. R. 364; Carter *v.* State, 42 La. Ann. 927, S. C. 8 So. R. 836.

[1] Rout *v.* Ninde, 111 Ind. 597; Broom's Legal Max. *134.

[2] Achorn *v.* Andrews (Me.), 12 Atl. R. 793; Maloney *v.* Hunt, 29 Mo. App. 379; Consolidated, etc., Co. *v.* O'Neil, 25 Ill. App. 313; Lancaster *v.* Waukegan, etc., Co., 132 Ill. 492, 24 N. E. R. 629; David *v.* Ætna Ins. Co., 9 Iowa, 45; Pratt *v.* Pratt (Mass.), 32 N. E. R. 747. If, as the authorities adjudge, rules have the effect of laws, it must necessarily result that the court is bound by its own rules. Courts are subject to the law as fully as the parties. Even the law-making power itself is bound by a law it has enacted until the law is repealed or abrogated in some constitutional mode.

may make rules governing matters of procedure. Rules must, as we believe, operate generally upon all parties and all causes pending in the tribunal that formulates them, for a court can not be allowed at the whim or caprice of the judge to arbitrarily apply a rule to one party or one cause and deny its application to other causes or parties. We do not mean to be understood as asserting that the court has no discretion in enforcing its rules; on the contrary, we affirm that it has a very comprehensive discretion, but we also affirm that parties have a right to have the rules applied uniformly, and that where the cases are the same no purely arbitrary discrimination shall be made.[1] Parties have a right to expect that the rules of the court will be given effect equally to all who stand upon the same footing.

[1] In the case of Thompson *v.* Hatch, 3 Pick. 512, it was said: "But a rule of court thus authorized and made has the force of law, and is binding upon the court as well as upon parties to an action, and can not be dispensed with to suit the circumstances of any particular case. In the case before us the plea was allowed to be filed on the fifth day of the term, although the rule allows but four days for that purpose. The circumstances were such as would justify that order of the court, if it had had power to pass it; but we are satisfied that no one judge of the court of common pleas or of this court has authority to dispense with rules deliberately made and promulgated, on account of the hardship of any particular case, any more than he would have authority to dispense with any requisition of the legislature itself. The courts may rescind or repeal their rules, without doubt, or, in establishing them, may reserve the exercise of discretion for particular cases; but the rule, once made without any such qualification, must be applied to all cases which come within it, until it is repealed by the authority which made it." Stronger language is used in State *v.* Edwards, 110 N. Car. 511, S. C. 14 S. E. R. 741. In Quynn *v.* Brooke, 22 Md. 288, it was held that where a rule of court provided that ten days' notice should be given before taking testimony, it was not competent for the court to abridge the time by a special order. See, also, Wall *v.* Wall, 2 Harr. & G. (Md.) 79; Burlington, etc., Co. *v.* Marchand, 5 Iowa, 468; David *v.* Ætna Ins. Co., 9 Iowa, 45; Walker *v.* Ducros, 18 La. Ann. 703; Hughes *v.* Jackson, 12 Md. 450; Tripp *v.* Brownell, 2 Gray, 402; Ogden *v.* Robertson, 15 N. J. L. 124; Coyote, etc., Co. *v.* Ruble, 9 Or. 121. A different doctrine is held in New Hampshire. Deming *v.* Foster, 42 N. H. 165. The doctrine of the case last cited can not, in our opinion, be sound. If a rule of court has the effect of a minor law, the court can not vary it by a special order at the pleasure of the judge. It is held in Consolidated, etc., Co. *v.* O'Neil, 25 Ill. App. 313, that parties may assume that the rules of court will be enforced, and that they can not be deemed guilty of negligence in doing so.

Rules of court should not be retroactive,[1] for parties can not take measures to comply with a rule until it is established and made known. In strictness, rules should be placed of record, but it has been held that it is sufficient if they are filed in the office of the clerk,[2] although in another case a different view is taken of the subject.[3] The court which makes the rule may repeal or abrogate it, but it has been held, and, as we believe correctly, that the judge in vacation can not annul a rule.[4] Rules of court remain in force although there may be a change in the court.[5] The courts that frame the rules are considered the best judges of their meaning and effect, and their construction of their own rules will be respected on appeal unless palpably erroneous.[6]

§ 187. **Rules—Power to frame.**—It is well settled that courts possess the inherent power to frame rules for the government of their business, and that it needs no express statutory declaration to invest them with this power.[7] In the very act of ere-

[1] Reist *v.* Hellbrenner, 11 S. & R. (Pa.) 131; Burlington, etc., Co. *v.* Marchand, 5 Iowa, 468.

[2] State *v.* Ensley, 10 Iowa, 149. See Mix *v.* Chandler, 44 Ill. 174.

[3] Owens *v.* Ranstead, 22 Ill. 161. We think that the rules of the court should be made of record. They are more important than special orders or judgments, and the spirit of the law is that all matters of a permanent and important nature should be duly recorded. It has often been said that "courts speak only by their records," and surely in a matter so important as that of minor laws they should so speak.

[4] Treishel *v.* McGill, 28 Ill. App. 68.

[5] Shane *v.* McNeill, 76 Iowa, 459, 41 N. W. R. 166.

[6] Snyder *v.* Bauchman, 8 S. & R. (Pa.) 336; Blair *v.* Hubartt, 139 Pa. St. 96, S. C. 21 Atl. R. 210; Baldwin *v.* St. Louis, etc., Co., 75 Iowa, 297, S. C. 9 Am. St. R. 479.

[7] Fullerton *v.* Bank of United States, 1 Pet. 604; Barry *v.* Randolph, 3 Binn. (Pa.) 277; Dubois *v.* Turner, 4 Yeates (Pa.), 361; Risher *v.* Thomas, 2 Mo. 98; Kennedy *v.* Cunningham, 2 Metcf. (Ky.) 538; Brooks *v.* Boswell, 34 Mo. 474; Nutter *v.* Houston, 42 Mo. App. 363; *In re* Road McCandless Tp., 110 Pa. St. 605, S. C. 1 Atl. R. 594; Horner *v.* Horner, 145 Pa. St. 258, S. C. 23 Atl. R. 441; Gist *v.* Drakely, 2 Gill. (Md.) 330; Cochran *v.* Loring, 17 Ohio, 409; Harres *v.* Commonwealth, 35 Pa. St. 416; Krutz *v.* Howard, 70 Ind. 174; Brooks *v.* Boswell, 34 Mo. 474; Sellars *v.* Carpenter, 27 Me. 497; Walker *v.* Ducros, 18 La. Ann. 703; Hill *v.* Barney, 18 N. H. 607; Ogden *v.* Robertson, 15 N. J. L. 124; Ferguson *v.* Kays, 21 N. J. L. 431; Estate of Boyd, 25 Cal. 511; Ollam *v.* Shaw, 27 Ind. 388; Fox *v.* Conway Fire Ins. Co., 53 Me. 107; Stadler *v.* Hertz, 13 Lea (Tenn.), 315; Seymour *v.* Phillips, etc., Co., 7 Biss. (C. C.)

ating a court the power to formulate rules of procedure is vested in the tribunal, because such a power is incident to its existence as a court. It is obvious that there is no reason for enumerating all the attributes and powers of a judicial tribunal, since inherent attributes and powers are present in the conception of such a tribunal, as part of the thing conceived as created or existing. The power to formulate rules, comprehensive as it is, does not authorize a court to establish a rule that conflicts with the law. No rule can be valid which is in conflict with a general principle of law or the provisions of a statute.[1] Where a rule is palpably unreasonable and oppressive it will not be valid, but it rests upon the party who assails it to make this affirmatively appear. Thus, a rule which requires a party to add to an affidavit for a change of venue matters not required by a statute, which fully provides what the affidavit shall contain, is not valid.[2] An excuse for not complying with a rule may be shown,[3] but in order to escape the force of a rule a clear and strong case must be established.[4] A party who seeks to excuse a failure to comply with a rule must show that he has not been guilty of negligence, and this he should do by the statement of facts. It is the duty of a party to take notice of the rules of the court in which his cause is pending, and he can not be allowed to plead ignorance of them as an excuse for his failure to yield them obedience. It is the duty of an attor-

460; Texas Land Co. *v.* Williams, 48 Texas, 602; Fisher *v.* National Bank of Commerce, 73 Ill. 34; Wyandotte, etc., Co. *v.* Robinson, 34 Mich. 428; People *v.* Chew, 6 Cal. 636; De Lorme *v.* Pease, 19 Ga. 220.

[1] The Brig Hiram, 23 Ct. of Cl. 431; De Lorme *v.* Pease, 19 Ga. 220; People *v.* McClellan, 31 Cal. 101; Mitchell *v.* Mitchell, 1 Gill. (Md.) 66; Suckley *v.* Rotchford, 12 Gratt. (Va.) 60, S. C. 65 Am. Dec. 240; State *v.* Posey, 17 La. Ann. 252, S. C. 87 Am. Dec. 525; Crotty *v.* Wyatt, 3 Brad. (Ill. App.) 388, 399.

[2] Kurtz *v.* Griffith, 68 Ind. 444. In the case cited the power to frame rules is recognized, but it is held that they must not contravene the law. The court cited the cases of Redman *v.* State, 28 Ind. 205; Galloway *v.* State, 29 Ind. 442; Whittem *v.* State, 36 Ind. 196; Truitt *v.* Truitt, 38 Ind. 16; Jeffersonville, etc., Co *v.* Hendricks, 41 Ind. 48; Bennett *v.* Ford, 47 Ind. 264.

[3] Shoemaker *v.* Smith, 74 Ind. 71; Galloway *v.* State, 29 Ind. 442; Hays *v.* Morgan, 87 Ind. 231; Burkett *v.* Holman, 104 Ind. 6; Bernhamer *v.* State, 123 Ind. 577, 580; Moulder *v.* Kempff, 115 Ind. 459, 463.

[4] Riggenberg *v.* Hartman, 102 Ind. 537; Witz *v.* Spencer, 51 Ind. 253.

ney to acquaint himself with the rules of court, and a failure to do so is negligence which will make him responsible to his client in case loss results from his ignorance.

§ 188. **Rules—Notice of by other courts.**—A rule is special to the court by which it is adopted, and is not, therefore, taken notice of by other courts.[1] It is even of a more special character than a special statute, and there is the greater reason for applying the doctrine that it will not be judicially noticed as a matter of public or general knowledge. Where a rule is sought to be brought to the notice of a court of original jurisdiction other than the court by which it was adopted it should be pleaded specially, and where it is sought to be brought to the attention of an appellate tribunal it should be incorporated in a bill of exceptions, or in some other authorized mode made part of the record proper. A rule is not part of the record proper except, perhaps, as to the court which framed it, so that it is always necessary when it is desired to bring it before other tribunals to make it a part of the record.

§ 189. **Discretionary powers—Nature and extent of.**—We have elsewhere spoken in a general way of the discretionary power of judicial tribunals,[2] but the practical importance of the subject makes it proper, if not necessary, to treat it more fully. It would be impossible for a court to conduct business if it were entirely stripped of all discretionary power. There is such a vast multitude of matters which courts are required to consider and decide that it is beyond the power of human foresight and wisdom to provide general and fixed rules that shall fit the various phases of cases with which the courts have to deal. Much must, of necessity, be left to the decision of the judge in the particular cases that come before him for trial

[1] Crotty *v.* Wyatt, 3 Brad. (Ill. App.), 388, 399; Knarr *v.* Conaway, 42 Ind. 260; Rout *v.* Ninde, 111 Ind. 597. In Sandon *v.* Proctor, 7 B. & C. 800, Holroyd, J., said: "Anything required to be done by the law of the land must be noticed by another court; but a court of error can not notice the practice of another court."

[2] *Ante*, § 181.

and judgment.[1] The field of judicial discretion is a wide one, but it is not unbounded. Where fixed and settled rules begin discretion ends. Not that there is no discretion in applying fixed rules of law, but that where fixed rules of law govern they must be given effect.[2] Judicial discretion is not a mere arbitrary power to be exercised as the whims, passions or caprice of the judge may dictate, for what is manifestly unreasonable or plainly opposed to common justice no judge has power to do.[3] He may exercise his reason and his judgment, but when he yields to passion, prejudice or caprice he goes beyond the limits of discretion. It by no means follows that because there

[1] It is said by Mr. Wait that "To anticipate every conceivable case is not a possibility, and to establish a legal rule which shall cover all future contingencies would be equally impracticable. It is a wise rule which declares that as much shall be done as is practicable to provide a rule which shall govern each case in accordance with legal principles instead of leaving the decision to the discretion of the judge. For, where there is a legal rule of decision, every one knows what that rule is, and he has a remedy by appeal in case any violation of the rule occurs to his detriment. But there are many cases in which no general rule can be applied, and in which the interests of the parties and of the public will be best subserved by leaving the disposition of particular questions to the discretion of the judge upon all the facts appearing in the cause. As the law now stands, there is hardly a general step in the progress of an action which is not more or less liable to be controlled by the discretion of the judge." 1 Wait's Pr. 463. At another place the same author says: "This discretion is indispensable to a wise and just administration of the law, for, in the multitudes of instances which occur in practice, the particular circumstances of each case require consideration before a just decision can be made. And no general rules can be adopted which would reach each case and do entire justice."

[2] Every fixed rule of law applicable to a case must be enforced at the demand of any suitor. When it is said that something is left to the discretion of a judge, it signifies that he ought to decide according to the rules of equity and the nature of the circumstances so as to advance the ends of justice." Platt *v.* Monroe, 34 Barb. 291; Piggott *v.* Ramey, 1 Scam. (Ill.) 145; Judges, etc., *v.* People, 18 Wend. 79.

[3] Abbott *v.* L'Hommedieu, 10 W. Va. 677; Rose *v.* Brown, 11 W. Va. 122; Seymour *v.* Delancy, 3 Cowen, 445, S. C. 14 Am. Dec. 552; People *v.* Superior Court, 5 Wend. 114; Moon *v.* Wellford, 84 Va. 34, S. C. 4 S. E. R. 572; Rooke's Case, 5 Coke R. 100*a*; Rex *v.* Wilkes, 4 Burr., 2527; Rex *v.* Young,1 Burr.,556,560; Dooley *v.* Barker,2 Mo.App.325,328; Dorman *v.* State, 34 Ala. 216, 235; Faber *v.* Bruner, 13 Mo. 541, 543; State *v.* Cummings, 36 Mo. 263, 279; Tripp *v.* Cook, 26 Wend. 143, 152; Bailey *v.* Trafe, 29 Cal. 422; Stringer *v.* Davis, 30 Cal. 318; *Ex parte* Farmers' Loan, etc., Co., 129 U. S. 206.

are no rigid rules a judge may do just what he pleases, for even where there are no fixed rules marking the course he must pursue he must keep within the bounds of what an old writer calls "right reason." Some of the courts have said that there are two kinds of discretion, limited and absolute,[1] but this, we say with deference and respect, can not be true. No judge can have absolute power, and absolute discretion implies the possession of that power. It would be a dangerous doctrine to concede to judges this absolute and unrestrained authority. On the other hand, it will not do to say that discretion is limited by fixed rules of law, for where there are fixed rules it can not be accurately said that discretionary power exists. Where the power is purely discretionary it is beyond review as long as discretion is not transcended or abused,[2] but if the judge transcends the bounds of judicial discretion or abuses it to the prejudice of a party the appellate court will award relief. In order to secure the interference of the appellate tribunal a very clear and strong case of the abuse of discretion must be shown.[3] It is very seldom that the appellate courts will review the action of the courts of original jurisdiction in matters of discretion, and the reports abound in cases where the appellate courts declined to interfere, but contain very few in which the rulings of the trial court were set aside. A court, upon proper request duly preferred, is, as a general rule, bound to exercise the discretionary

[1] People *v.* City of Syracuse, 78 N. Y. 56, 61; Howell *v.* Mills, 53 N. Y. 322; Anonymous, 59 N. Y. 313.

[2] McLimans *v.* City of Lancaster, 57 Wis. 297; Third Great Western, etc., Co. *v.* Loomis, 32 N. Y. 127; Powell *v.* Jopling, 2 Jones L. (N.C.) 400; Davis *v.* State, 15 Ohio, 72; Gandolfo *v.* State, 11 Ohio St. 114; Dobbins *v.* State, 14 Ohio St. 493; Holt *v.* State, 11 Ohio St. 691; State *v.* Barrett, 40 Minn. 65, 70, S. C. 41 N. W. R. 459; Welch *v.* Wetzell Co., 29 W. Va. 63, S. C. 1 S. E. R. 339; State *v.* Maher, 74 Iowa, 77, S. C. 37 N. W. R. 2; Black *v.* Thomson, 107 Ind. 162; Stephenson *v.* State, 110 Ind. 358; Byne *v.* Smith, 76 Ga. 101; McBride *v.* Northern, etc., Co., 19 Oregon, 64, S. C. 23 Pac. R. 814; Grigsby *v.* Schwarz, 82 Cal. 278, S. C. 22 Pac. R. 1041; Albion, etc., Co. *v.* Richmond, etc., Co., 19 Nev. 225; Ray *v.* Northup, 55 Wis. 396.

[3] Seymour *v.* Board of Supervisors, 40 Wis. 62; Smith *v.* Smith, 51 Wis. 665, 668; McLaren *v.* Kehlor, 22 Wis. 297, 300; Churchill *v.* Welsh, 47 Wis. 39, 54; Tierney *v.* Union Lumbering Co., 47 Wis. 248; Gordon *v.* Spencer, 2 Blackf. 286; Weinecke *v.* State (Neb.), 51 N. W. R. 307; Dobson *v.* Cothran, 34 S. Car. 518, 13 S. E. R. 679; *Ex parte* Richardson (Ala.), 11 So. R. 316; Detro *v.* State, 4 Ind. 200, 202.

power with which it is vested, but it can not be compelled to exercise it in a particular mode.[1] The instances in which trial courts are adjudged to possess purely discretionary powers are very numerous. In relation to the amendment and filing of pleadings, to the examination of witnesses, to the conduct of the trial, the discretion of the court of original jurisdiction is very broad and comprehensive.[2]

[1] Life Ins. Co. *v.* Adams, 9 Peters, 573; State *v.* Laughlin, 75 Mo. 358; *Ex parte* Henderson, 6 Fla. 279; *Ex parte* Dickson, 64 Ala. 188; Floral Springs, etc., Co. *v.* Rives, 14 Nev. 431; State *v.* Cape Girardeau, etc., 73 Mo. 560; State *v.* Rising, 15 Nev. 164; *Ex parte* Cage, 45 Cal. 248.

[2] We give some of the very many cases in which rulings have been held to be made in the exercise of discretionary power: *Amendment and filing of pleadings.*—Donald *v.* Nelson, 94 Ala. 111, S. C. 10 S. R. 317; Emeric *v.* Alvarado, 90 Cal. 44, S. C. 27 Pac. R. 356; Stensgaard *v.* St. Paul, etc., Co., 50 Minn. 429, 52 N.W. R. 910; Miner *v.* Baron, 131 N. Y. 677, S. C. 30 N. E. R. 481; People *v.* Wayne, etc., 41 Mich. 727, S. C. 49 N. W. R. 925; Saint *v.* Guerrerio, 17 Colo. 448, 30 Pac. R. 335; Johnson *v.* Swayze (Neb.), 52 N.W. R. 835; Moore *v.* Garner, 109 N. Car. 157, S. C. 13 S. E. R. 768; Thompson *v.* Thompson, 6 Hous. (Del.) 225; Pincus *v.* Dowd, 11 Mont. 88, S. C. 27 Pac. R. 393; Jenne *v.* Burt, 121 Ind. 275; Reeder *v.* Sayre, 70 N. Y. 180, 189. *Denying leave to amend.*—Chicago, etc., *v.* Jones, 103 Ind. 386; Brauns *v.* Stearns, 1 Or. 367; Smith *v.* Gould, 61 Wis. 31; Hexter *v.* Schneider, 14 Ore. 184; Holliday *v.* Elliott, 3 Ore. 340; Weed, etc., Co. *v.* Philbrick, 70 Mo. 646, 648. *Impaneling the jury.*—Hudson *v.* State, 1 Blackf. 317; State *v.* Mann, 83 Mo. 589; Burt *v.* Panjaud, 99 U. S. 180; Pickens *v.* Hobbs, 42 Ind. 270; DePew *v.* Robinson, 95 Ind. 109, 111; Hopt *v.* Utah, 120 U. S. 430, 438; Bibb *v.* Reid, 3 Ala. 88; People *v.* Arceo, 32 Cal. 40; Grand Rapids, etc., Co. *v.* Jarvis, 30 Mich. 308; United States *v.* Neverson, 1 Mackey, 152. But the discretion of the court in the matter of selecting jurors does not go to the extent of permitting it to disregard settled rules regarding the qualifications of persons called as jurymen. *Mode of trial.* —Fitz Gerald *v.* Hayward, 50 Mo. 516; Martin *v.* Hall, 26 Mo. 386; Dooley *v.* Barker, 2 Mo. App. 325; Young *v.* Ledrick, 14 Kan. 92. The discretion as to the mode of trial is a limited one, for the right to try by jury or by the court can not be denied where the law fixes the right. In chancery cases the court may, in its discretion, submit matters of fact to a jury but it is not bound to do so. *Conduct of the trial.*—Crotty *v.* Wyatt, 3 Brad. (Ill. App.) 388, 389; Wartena *v.* State, 105 Ind. 445, 447; Brooks *v.* Perry, 23 Ark. 32; Weaver *v.* State, 24 Ohio St. 584; State *v.* Collins, 72 N. Car. 144; Sullivan *v.* State, 46 N. J. L. 446; People *v.* Keenan, 13 Cal. 581; White *v.* People, 90 Ill. 117; Dille *v.* State, 34 Ohio St. 617; Hunt *v.* State, 49 Ga. 255; Baldwin *v.* Burrows, 95 Ind. 81; Trice *v.* Hannibal, etc., Co., 35 Mo. 416; Dobbins *v.* Oswalt, 20 Ark. 619, 624; Burson *v.* Mahoney, 6 Baxt. 304, 307; Freligh *v.* Ames, 31 Mo. 253; Hart *v.* State, 14 Neb. 572; People *v.* Kelly, 94 N. Y.

§ 190. **Records.**—We are here concerned only with judicial records, and our discussion will be confined to records of that

526; Williams *v.* Commonwealth, 82 Ky. 640; Brooks *v.* Perry, 23 Ark. 32; State *v.* Jefferson, 43 La. Ann. 995, S. C. 10 S. R. 199; Felt *v.* Cleghorn (Colo. App.), 29 Pac. R. 813; State *v.* Ulrich (Mo.),19 S. W. R. 656; Milliken *v.* Mannheimer (Minn.), 52 N.W. R. 139. *Consolidation of actions or suits.*—City of Springfield *v.* Sleeper, 115 Mass. 587; Kimball *v.* Thompson, 4 Cush. 441; Commonwealth *v.* James, 99 Mass. 438; Commonwealth *v.* Powers, 109 Mass. 353. *Control of the sittings of the court.*—McGowen *v.* Campbell, 28 Kan. 25, 30. *Intercourse between the bench and the bar.*—Long. *v.* State, 12 Ga. 303, 330. *Competency of witnesses.*—Chateaugay, etc., Co. *v.* Blake, 144 U. S. 476; Maughan *v.* Burns (Vt.), 23 Atl. R. 583; Lake Erie, etc., Co. *v.* Mugg, 132 Ind. 168, S. C. 31 N. E. R. 564. *Separation of witness and incidental matters.*—Johnson *v.* State, 14 Ga. 55; State *v.* Zellers, 2 Halst. (N. J.) 220; Southey *v.* Nash,7 Car. & P. 632; Hanvey *v.* State, 68 Ga. 612; State *v.* Brookshire, 2 Ala. 303; Sartorious *v.* State, 24 Miss. 602; State *v.* Fitzsimmons, 30 Mo. 236; Laughlin *v.* State, 18 Ohio, 99; Rex *v.* Cook, 13 How. St. Tr. 348; State *v.* Sparrow, 3 Murph. (N. Car.) 487; Bulliner *v.* People, 95 Ill. 394; People *v.* Boscovitch, 20 Cal. 436; Hubbard *v.* Hubbard, 7 Ore. 42; Smith *v.* State, 4 Lea (Tenn.), 428; Parker *v.* State, 67 Md. 329, S. C. 1 Am. St. R. 387; Davis *v.* Byrd, 94 Ind. 525; Burk *v.* Andis, 98 Ind. 59; State *v.* Thomas, 111 Ind. 515, S. C. 60 Am. R. 720; Laughlin *v.* State, 18 Ohio, 99, S. C. 51 Am. Dec. 444; Keith *v.* Wilson, 6 Mo. 435, S. C. 35 Am. Dec. 443; Cook *v.* State, 30 Tex. App. 607, 18 S.W. R. 412; Carlton *v.* Commonwealth (Ky.), 18 S. W. R. 535. *But the court has no right to exclude parties from the court room although they may be witnesses.*—Schneider *v.* Haas, 14 Ore. 174, S. C. 58 Am. R. 296; Tift *v.* Jones, 52 Ga. 538; Crowe *v.* Peters, 63 Mo. 429; Larue *v.* Russell, 26 Ind. 386; Ryan *v.* Couch,66 Ala.244; Chester *v.* Bower, 55 Cal. 46; Watts *v.* Holland, 56 Texas, 54. *Delivery of evidence.*—McCleneghan *v.* Reid, 34 Neb. —, 51 N. W. R. 1037; State *v.* Howard, 35 S. Car. 197, S. C. 14 S. E. R. 481; Sandwich *v.* Dolan (Ill.), 31 N. E. R. 416; Dobson *v.* Cothran, 34 S. Car. 518, S. C. 13 S. E. R. 679; Scoland *v.* Scoland, 4 Wash. 118, 29 Pac. R. 930; People *v.* Durfee,62 Mich. 487; Walker *v.* Walker, 14 Ga. 242; Goodman *v.* Kennedy, 10 Neb. 270; Agate *v.* Morrison, 84 N. Y. 672; Blake *v.* Powell, 26 Kan. 320; Western Union Tel. Co. *v.* Buskirk, 107 Ind. 549; Noblesville, etc., Co. *v.* Gause, 76 Ind. 142; McKinney *v.* Jones, 55 Wis. 39; Caldwell *v.* New Jersey, etc., Co., 47 N. Y. 282; Johnson *v.* Mason, 27 Mo. 511; Larman *v.* Huey, 13 B. Monr. 436; Commonwealth *v.* Richetson, 5 Metcf. (Mass.) 412; Darland *v.* Rosencrans, 56 Iowa, 122; McDowell *v.* Crawford, 11 Gratt. 377, 408; Beaulien *v.* Parsons, 2 Minn. 37; Nixon *v.* Beard, 111 Ind. 137; Girault *v.* Adams, 61 Md. 1, 9; Riley *v.* State, 88 Ala. 193, S. C. 7 S. R. 149; Testard *v.* State, 26 Texas App. 260, S. C. 9 S. W. R. 888; State *v.* Powell, 40 La. Ann. 241; Fogarty *v.* State, 80 Ga. 450, S. C. 5. S. E. R. 782; Hornsby *v.* South Carolina, etc., Co., 26 S. Car. 187, S. C. 1 S. E. R. 594. *Examination of witnesses.*—Lockwood *v.* Rose, 125 Ind. 588, 595; Ferguson *v.* Rutherford, 7 Nev. 385; Kalk *v.* Fielding, 50 Wis. 339; Bowers *v.* Mayo, 32 Minn. 241;

general class. We mean by judicial records those wherein the proceedings of courts or judicial tribunals are recorded or registered. The term "record" often means a complete history of the rulings,[1] orders and transactions of the court in a special case, and it is frequently employed as signifying the book or books containing the entries of orders, rulings and judgment in all cases. In appellate procedure the term "record" usually means the papers and instruments properly before the court on

Schuster *v.* Stout, 30 Kan. 529; Wallace *v.* Taunton, etc., Co., 119 Mass. 91; Kellogg *v.* Nelson, 5 Wis. 125, 131; Moody *v.* Rowell, 17 Pick. 490, 498; State *v.* Lull, 37 Me. 246; Farmers, etc., Co. *v.* Groff, 87 Pa. St. 124; Hopkinson *v.* Steel, 12 Vt. 582; Donnell *v.* Jones, 13 Ala. 490; Whiting *v.* Mississippi, etc., Co., 76 Wis. 592, S. C. 45 N. W. R. 672; Obernalte *v.* Edgar, 28 Neb. 70, S. C. 44 N. W. R. 82; Parker *v.* Georgia, etc., Co., 83 Ga. 539, S. C. 10 S. E. R. 233; Smith *v.* Hays, 23 Ill. App. 244; Lawson *v.* Glass, 6 Colo. 134; Pennsylvania Co. *v.* Newmeyer, 129 Ind. 401, S. C. 28 N. E. R. 860; Springfield *v.* Dalbey, 139 Ill. 134, S. C. 29 N. E. R. 860; Willitts *v.* Schuyler, 3 Ind. App. 118, 29 N. E. R. 273; Sanger *v.* Flow, 48 Fed. R. 152; Drexel *v.* Pease, 129 N. Y. 96, S. C. 29 N. E. R. 241. *Appointment of receivers.*—Buenavista, etc., Co. *v.* Chattanooga, etc., Co., 87 Ga. 689, S. C. 13 S. E. R. 684; Nimocks *v.* Cape Fear, etc., Co., 110 N. Car. 230, S. C. 14 S. E. R. 622; Allen *v.* Nussbaum, 87 Ga. 470, S. C. 13 S. E. R. 635; Texas Trunk, etc., Co. *v.* Hogg, 83 Texas, 1, 18 S. W. R. 199. *Granting a new trial.*—Hudson *v.* Hudson, 87 Ga. 678, S. C. 13 S. E. R. 583; Vickery *v.* Central, etc., Co., 89 Ga. 365, 15 S. E. R. 464; Denver *v.* Jacobson, 17 Colo. 497, 30 Pac. R. 246; Grant *v.* Grant, 109 N. Car. 710, S. C. 14 S. E. R. 90; Edsall *v.* Ayers, 15 Ind. 286; White *v.* Poorman, 24 Iowa, 108; Chapman *v.* Wilkinson, 22 Iowa, 541; Stork *v.* Judge, etc., 41 Mich. 5; Alderman *v.* Montcalm, 41 Mich, 550. See authorities cited Elliott's App. Pro., § 516. *Discharge of jury before verdict.*—Winsor *v.* The Queen, 6 B. & S. 143; Queen *v.* Charlesworth, 1 B. & S. 460; State *v.* Walker, 26 Ind. 346.

[1] In Sayles *v.* Briggs, 4 Metcf. (Mass.) 421, the court said: "A record is a memorial or history of the judicial proceedings in a case, commencing with the writ or complaint, and terminating with the judgment; and the design is, not merely to settle the particular question in difference between the parties, or the government and the subject, but to furnish fixed and determinate rules and precedents for all future like cases. A record, therefore, must be precise and clear, containing proof within itself of every important fact upon which the judgment rests." Greene County *v.* Wilhite, 35 Mo. App. 39. See Montana Ry. Co. *v.* Warren, 137 U. S. 348, S. C. 12 Pac. R. 641; Watts *v.* Overstreet, 78 Tex. 571, S. C. 14 S. W. R. 704; Newell *v.* Meyendorff, 9 Mont. 254, 23 Pac. R. 333; Spangler *v.* San Francisco, 84 Cal. 12, S. C. 18 Am. St. R. 158; Davidson *v.* Murphy, 13 Conn. 213, 217; Hahn *v.* Kelley, 34 Cal. 391, 422; Murfree *v.* Carmack, 4 Yerg. (Tenn.) 269; Matter of Christein, 11 Jones & Spen. (N. Y.) 523.

appeal, and so it does where the reference of court or counsel is made to the record in a particular case. As is true of nearly all the words in our language, the meaning of the word "record" is to be determined by a consideration of the words with which it is associated. It is important to note a distinction between what may be called the record proper or the intrinsic record, and what may be called the special record. We mean by the "intrinsic record," or "the record proper," that which it is the duty of the court to order without special acts or requests from the parties. By "special record" we mean a record to which additions are made in the particular case at the request of a party. To illustrate by familiar examples, a judgment, a ruling on demurrer, or the like, are parts of the record proper, but testimony, collateral motions, affidavits, or the like, are not, and to become matters of record they must be brought in by a bill of exceptions or in some other specific mode. What a special record contains is of record when the special matters are properly brought in, but matters that are directly a part of the business of the court, and immediately connected with its rulings and decisions, are, without special action, part of the record proper.[1] This distinction is one of

[1] *Pleadings are part of the record proper.*—Gibbs *v.* Dickson, 33 Ark. 107; State *v.* Godwin, 5 Ire. (N. C.) 401, S. C. 44 Am. Dec. 42; Washington Ice Co. *v.* Lay, 103 Ind. 48; Burntrager *v.* McDonald, 34 Ind. 277; Board *v.* Montgomery, 109 Ind. 69; State *v.* Earl, 133 Ind. 389, S. C. 32 N. E. R. 1126; Stimson *v.* Higgins, 9 How. Pr. 86; Vail *v.* Iglehart, 69 Ill. 332; Stevison *v.* Earnest, 80 Ill. 513; Emery *v.* Whitwell, 6 Mich. 486; Clark *v.* De Pew, 25 Pa. St. 509, S. C. 64 Am. Dec. 717. *Direct motions are part of the record proper, but collateral motions are not.*—Hauser *v.* Roth, 37 Ind. 89; Sidener *v.* Davis, 87 Ind. 342; Pratt *v.* Rice, 7 Nev. 123; United States *v.* Parrott, McAll. (U. S.) 447; Freshour *v.* Logansport, etc., Co., 104 Ind. 463; Curry *v.* City of Spokane Falls, 2 Wash. 541, 27 Pac. R. 477; Whidby Land, etc., Co. *v.* Nye, 5 Wash. 301, 31 Pac. R. 752; Elliott's App. Procedure, §§ 190, 191. See Bill of Exceptions. *The summons is not, ordinarily, a necessary part of record where there is an appearance, but where there is a default it is otherwise.* McCoy *v.* Trucks, 121 Ind. 292; Shewalter *v.* Bergman, 123 Ind. 155. Judgments and decrees must be entered in the proper record. Hall *v.* Hudson, 20 Ala. 284; Newcomb's Lessee *v.* Smith, 5 Ohio, 447, 451; Raymond *v.* Smith, 1 Metcf. (Ky.) 65, S. C. 71 Am. Dec. 458. There is, of course, an essential difference in cases where the question arises in direct proceedings and cases where it arises in a collateral attack. Roberts *v.* Burrell, 3 Thomp. & Cook, 30; Houston *v.* Walcott, 1 Iowa, 86. See,

practical importance, especially where cases are prepared for appellate courts or carried up on appeal. To make an entry part of the record proper it must be authorized by law or by the order of the court. The statements written in the book or books wherein the proceedings of the court are kept by a ministerial officer are not part of the record unless they are put there by order of the court or in the performance of official duty.[1] The minute book of the clerk is the record for many purposes, but it is not ordinarily the final or authentic record, since, as a general rule, it is supplanted by the regular and formal record made up as the law requires.[2] In strictness the judge, or the proper judicial officer, should sign the record but his omission to do so does not render the judgment void, nor, as we believe, does it constitute such material error as will authorize a reversal of the judgment.[3] It is probably true that

generally, Gunn *v.* Plant, 94 U. S. 664; Hollister *v.* Giddings, 24 Mich. 501; Kambieskey *v.* State, 26 Ind. 225.

[1] Young *v.* Martin, 8 Wall. 354; State *v.* Acker, 52 N. J. L. 259, S. C. 19 Atl. R. 258; People *v.* Beaver, 83 Cal. 419, S. C. 23 Pac. R. 321; Tennessee Co. *v.* Alabama Co., 81 Ala. 94; Clarke *v.* Kane, 37 Mo. App. 258; Vandekarr *v.* State, 51 Ind. 91; Board *v.* Slatter, 52 Ind. 171; Lewis *v.* Godman, 129 Ind. 359, S. C. 27 N. E. R. 563; Louisville, etc., Co. *v.* Shanks, 132 Ind. 395, S. C. 31 N. E. R. 1111; Fisher *v.* United States (Okl.), 31 Pac. R. 195; Swearingen *v.* Wilson (Texas Civ. App.), 21 S. W. R. 74; Sutherland *v.* Putnam (Ariz.), 24 Pac. R. 320; Baker *v.* Swift, 87 Ala. 530, S. C. 6 So. R. 153; People *v.* O'Brien, 78 Cal. 41, S. C. 20 Pac. R. 359; Thompson *v.* Ridelsperger, 144 Pa. St. 416, S. C. 22 Atl. R. 826; Gould *v.* Howe, 127 Ill. 251; Chicago, etc., Co. *v.* Yando, 127 Ill. 214; Bowen *v.* Fox, 99 N. C. 127, S. C. 5 S. E. R. 437; Watson *v.* Commonwealth, 85 Va. 867, S. C. 9 S. E. R. 418. Entries on the judge's docket are held not to be part of the record proper. McCormick *v.* Wheeler, 36 Ill. 114, S. C. 85 Am. Dec. 388; Lewis *v.* May, 22 Iowa, 599; Rogers *v.* Morton, 51 Iowa, 709; Case *v.* Plato, 54 Iowa, 64; Stark *v.* Billings, 15 Fla. 318; Miller *v.* Wolf, 63 Iowa, 233; Young *v.* Buckingham, 5 Ohio, 485; Burney *v.* Boyett, 1 How. (Miss.) 39; State *v.* Manley, 63 Iowa, 344; Towle *v.* Leacox, 59 Iowa, 42. But the entries of the judge may be used as a memorial for a *nunc pro tunc* order. McCormick *v.* Wheeler, *supra.*

[2] Barnes *v.* Lee, 1 Cranch (U. S. C. C.), 430; Willard *v.* Whitney, 49 Me. 235; Taylor *v.* Commonwealth, 44 Pa. St. 131.

[3] Fontaine *v.* Hudson, 93 Mo. 62, S. C. 3 Am. St. R. 515; Platte County *v.* Marshall, 10 Mo. 346; Childs *v.* McChesney, 20 Iowa, 431, S. C. 89 Am. Dec. 545; Cannon *v.* Hemphill, 7 Texas, 184; Crim *v.* Kessing, 89 Cal. 478; Baker *v.* Baker, 51 Wis. 538; Traer *v.* Whitman, 56 Iowa, 443; Clapp *v.* Hawley, 97 N. Y. 610; Gunn *v.* Tackett, 67 Ga. 725; Keener *v.*

where the statute in clear and imperative terms makes it essential to the effectiveness or validity of the proceedings that the record should be signed by the proper officer the rule would be different, but where there is no such imperative requirement the omission to sign the record is not necessarily fatal. A judgment entered in the wrong book of records is not void as between the parties,[1] but if an innocent third person should be misled to his prejudice we suppose it quite clear that he would be entitled to relief if he was himself free from fault, and not lacking in diligence or care. There must, of course, be some written memorial or entry of a judgment or decree, or else it can not be said to have a legal existence,[2] but no particular form is required.[3] This general statement is a

Goodson, 89 N. Car. 273; French *v.* Pease, 10 Kan. 51; Cathcart *v.* Peck, 11 Minn. 45; State *v.* Bliss, 21 Minn. 458, 462; Slocomb, Richards, etc., *Ex parte*, 9 Ark. (4 Eng.) 375; Rollins *v.* Henry, 78 N. Car. 342, 346; Keener *v.* Goodson, 89 N. Car. 273, 277; Eastman *v.* Harteau, 12 Wis. 267, 275. *Contra*, Ferguson *v.* Chastant, 35 La. Ann. 485; Saloy *v.* Collins, 30 La. Ann. 63; State *v.* Jumel, 30 La. Ann. 421; Galbraith *v.* Sidener, 28 Ind. 142; Raymond *v.* Smith, 1 Metcf. (Ky.) 65, S. C. 71 Am. Dec. 458. See, generally, Ringle *v.* Weston, 23 Ind. 588; State *v.* Wanee, 4 Ind. App. 1, S. C. 30 N. E. R. 161; Kambieskey *v.* State, 26 Ind. 225; Hollister *v.* Giddings, 24 Mich. 501.

[1] Sprigg *v.* Stump, 8 Fed. R. 207, 212; Hopper *v.* Lucas, 86 Ind. 43, 50; Bond *v.* Citizens, etc., Bank, 65 Md. 498; Thompson *v.* Rickford, 19 Minn. 17.

[2] Jones *v.* Walker, 5 Texas, 427; Davidson *v.* Murphy, 13 Conn. 213; Meeker *v.* Van Rensselaer, 15 Wend. 397; Boker *v.* Bronson, 5 Blatchf. 5; Knapp *v.* Roache, 82 N. Y. 366; Witter *v.* Dudley, 42 Ala. 616; Stromburg *v.* Earick, 6 B. Monr. 578; Benaway *v.* Bond, 2 Pinney (Wis.), 449, S. C. 54 Am. Dec. 147. See, generally, Mudge *v.* Yaples, 58 Mich. 307, S. C. 25 N. W. R. 297; Post *v.* Harper, 61 Mich. 434, S. C. 28 N. W. R. 161; Reed *v.* Gage, 33 Mich. 179; Mayhew *v.* Snell, 33 Mich. 182; Fish *v.* Emerson, 44 N. Y. 376; Wright *v.* Fletcher, 12 Vt. 431; Strong *v.* Bradly, 13 Vt. 9; Nye *v.* Kellam, 18 Vt. 594; Ellsworth *v.* Learned, 21 Vt. 535; Rockwood *v.* Davenport, 37 Minn. 533; Eastham *v.* Sallis, 60 Texas, 576; Hall *v.* Hudson, 20 Ala. 284.

[3] Little, etc., Co. *v.* Little, etc., Co., 11 Colo. 223, S. C. 7 Am. St. R. 226; Terry *v.* Berry, 13 Nev. 514; Kase *v.* Best, 15 Pa. St. 101, S. C. 53 Am. Dec. 573; Elliott *v.* Jordan, 7 Baxt. 376; Clark *v.* Melton, 19 S. Car. 498; Bank of the Old Dominion *v.* McVeigh, 32 Gratt. 530; Church *v.* Crossman, 41 Iowa, 373; Potter *v.* Eaton, 26 Wis. 382; McNamara *v.* Cabon, 21 Neb. 589; Flack *v.* Andrew, 86 Ala. 395; Spence *v.* Simmons, 16 Ala. 828. See, generally, Ollis *v.* Kirkpatrick (Idaho), 28 Pac. R. 435; Bode *v.* Investment Co., 1 N. D. 121; Crim *v.* Kessing, 89 Cal. 478, S. C. 26 Pac. R. 1074; Bode *v.* Investment Co., 6 Dak. 499; Jeffries *v.* McNamara, 49 Ind. 142; Burge *v.*

correct expression of the general rule, but it is to be understood that the entry of record is not the judgment. The entry of the judgment is evidence, the decision of the court is the judgment or decree. This distinction is sometimes important since there may in some cases be process taken out upon the judgment or other action based upon it, prior to its formal entry of record.[1] The safe practice, however, is to have the judgment entered before attempting to put it into execution.

§ 191. **Control of record.**—It is an old and firmly settled rule that a court during term may correct errors or mistakes in its records. In every court resides the general right and power to make "its records speak the truth," but, as will be developed when we come to consider the doctrine of making entries "now for then," there is an essential difference in practice between the right to correct records during term and the right to correct them after the close of the term. It is, perhaps, not quite accurate to assert that the principle is different in the two classes of cases, for the actual difference is rather as to the mode of exercising the right than as to the nature of the right itself. As long as the proceedings are *in fieri* the control of the record is in a sense more complete and approaches near the absolute; but, after the term ends, the right is somewhat abridged and limited, but it is by no means extinct. During the term the proceedings, as has been often said, "remain in the breast of the judge," and he may alter or amend "according to the truth and right."[2] The court has

Shirk, 10 Ind. 396; Needham *v.* Gillaspy, 49 Ind. 245; Duerison *v.* Bellows, 1 Blackf. 217; Wernwag *v.* Brown, 3 Blackf. 457. As shown in some of the cases cited, the entry should identify the parties named in the pleadings, but an error in this respect is not always fatal. Haynes *v.* Backman (Cal.), 31 Pac. R. 746.

[1] *Ex parte* Raye, 63 Cal. 491; Davis *v.* Shaver, 1 Phill. (N. Car.) 18, S. C. 91 Am. Dec. 92; Los Angeles County Bank *v.* Raynor, 61 Cal. 145; Estate of Cook, 77 Cal. 220, S. C. 11 Am. St. R. 267; Schuster *v.* Rader, 13 Colo. 329; Estate of Newman, 75 Cal. 213, S. C. 7. Am. St. R. 146; Matthews *v.* Houghton, 11 Me. 377; Fish *v.* Emerson, 44 N. Y. 376; Crim *v.* Kessing, 89 Cal. 478; Conwell *v.* Kuykendall, 29 Kan. 707.

[2] 3 Black. Com. 407; Saunders *v.* Coffin, 16 Ala. 421; Amory *v.* Reilly, 9 Ind. 490, 494; Layman *v.* Graybill, 14 Ind. 166; Hansen *v.* Schlesinger, 125 Ill. 230; Memphis *v.* Brown, 94 U. S.

power, we think it well to suggest in order to avoid misunderstanding, to change rulings made by it prior to final judgment during term, and this power, as is obvious, is quite different from the power to alter or amend a record. The power to change a ruling or decision is more limited than the power to make changes in the record. After a final decision or final judgment we think it quite doubtful whether the power to make, of its own volition, another decision or give another judgment exists in any court.[1] We do not doubt that a court may grant a motion, as for a new trial or the like, and thus vacate its judgment, but we very much doubt whether it can without a new hearing or new trial, effectively and completely recall a final judgment it has announced. In many of the States the right to voluntarily dismiss an action ceases as soon as the court announces its finding or judgment, and in those States the announcement can not be withdrawn so as to permit the plaintiff to dismiss his action. Where rights in their nature final are concluded by a decision or judgment, and there is a specific mode of review or of making a change in the decision or judgment, we suppose the mode prescribed must be fol-

715; Robinson *v.* Commissioners, 12 Md. 132; Lane *v.* Ellinger, 32 Texas, 369; Green *v.* Pittsburgh, etc., Co., 11 W. Va. 685; Brown *v.* Brown, 53 Wis. 29; De Castro *v.* Richardson, 25 Cal. 49; Stahl *v.* Webster, 11 Ill. 511; Moore *v.* Taylor, 1 Idaho (N. S.), 630; United States *v.* Harminson, 3 Saw. (U. S. C. C.) 556; Morgan *v.* Eggers, 127 U. S. 63; State *v.* Dougherty, 70 Iowa, 439; Barrell *v.* Tilton, 119 U. S. 637; Goddard *v.* Ordway, 101 U. S. 745; Wolmerstadt *v.* Jacobs, 61 Iowa, 372; Alabama, etc., Co. *v.* Nichols, 109 U. S. 232; Obenchain *v.* Comegys, 15 Ind. 496; Sexton *v.* Bennett, 63 Hun, 624. See, generally, Brusie *v.* Peck, 62 Hun, 248, S. C. 16 N. Y. Supp. 645; Hall *v.* Merrill, 47 Minn. 260, S. C. 49 N. W. R. 280; Nell *v.* Dayton, 47 Minn. 257, S. C. 49 N. W. R. 981; Township of Hiawatha *v.* School Craft, etc., 90 Mich. 270, S. C. 51 N. W. R. 282; Quigley *v.* Birdseye, 11 Mont. 439, S. C. 28 Pac. R. 741; State *v.* Tate, 109 Mo. 265, S. C. 18 S. W. R. 1088; Day *v.* Argus, etc., Co., 47 N. J. Eq. 594, S. C. 22 Atl. R. 1056.

[1] Owen *v.* Bankhead, 82 Ala. 399, S. C. 3 So. R. 97; Wray *v.* Hill, 85 Ind. 546; Levy *v.* Chittenden, 120 Ind. 37; Hartlepp *v.* Whiteley, 129 Ind. 576; Clark *v.* State, 125 Ind. 1; Hartlepp *v.* Whitely *et al.*, 131 Ind. 543. See Cowles *v.* Curry, 96 N. Car. 331, where it is held that if a judge substitutes a judgment for one previously given, that the question must be first made in the trial court or it will not be available on appeal. See, generally, Snowden *v.* Preston, 73 Md. 261, S. C. 20 Atl. R. 910; Radclyffe *v.* Barton, 154 Mass. 157, S. C. 28 N. E. R. 148.

lowed; but decisions, or orders, in their nature intermediate or interlocutory, may be changed at any time before the final judgment.[1] A court may at any time before a final judgment has been pronounced change its ruling on ordinary motions or on demurrers. There is, as we have substantially said, a plenary right existing in the court to correct its mistakes in rulings upon the pleadings; but this right, comprehensive as it is, does not extend so far as to permit a change in such rulings after a final judgment has been announced and entered. The court may, of course, set aside or vacate the judgment in the regular mode, and after this is done correct errors in the intermediate rulings.

§ 192. **Nunc pro tunc entries.**—There is a diversity of opinion as to the source of the power to make *nunc pro tunc* entries. Some of the courts regard the statute of Henry VI as the source of the power of the courts to cause entries to be made now for then,[2] but we incline strongly to the opinion that the power is an inherent one.[3] It seems clear to us that every court must have power to make its records conform to the truth, and ac-

[1] Warren *v.* Williams, 25 Mo. App. 22; United States, etc., *v.* Jordan, 21 Abbott N. C. 330; Brown *v.* United States, etc., Association, 90 Ky. —, S. C. 13 S. W. R. 1085.

[2] Makepeace *v.* Lukens, 27 Ind. 435; Jenkins *v.* Long, 23 Ind. 460.

[3] Clarion Nat'l Bank *v.* Breneman, 114 Pa. St. 315, S. C. 5 Cent. R. 478; Conklin *v.* New York, etc., Co., 13 N. Y. S. 782. See, generally, Chissom *v.* Barbour, 100 Ind. 1; Fuller *v.* Stebbin, 49 Iowa, 376. In the case of Crim *v.* Kessing, 89 Cal. 478, S. C. 23 Am. St. R. 491, the court said: "All courts of record have the inherent power to correct their records so that they shall conform to the actual facts, and speak the truth of the case; and such correction may be made at any time either upon the motion of the court itself, or at the instance of any party interested in the matter. Ordinarily, a court would require notice of the motion to be given to all parties interested, but it has the power to make the correction without notice. When made, the record so corrected, as well as the order making the correction, is conclusive upon any other court in which the record is offered in evidence. Balch *v.* Shaw, 7 Cush. 282. It appears by the order made in the present case that proof was made to the satisfaction of the court that at the trial of the cause, March 20, 1882, such order of substitution was in fact made, but had not been entered by the clerk. That court was the sole judge of the sufficiency of the proofs offered in support of the motion, and its action is conclusive, except in direct proceedings to vacate the order."

curately express it. Courts of justice can not, without violating the principles they are organized to administer and enforce, permit their record to speak falsely, and if, by mistake or inadvertence, the record does not speak the truth, the court, as an inherent attribute of its existence, must possess, as we believe, the power to make it do so. We are immediately concerned with the question of practice, for we are speaking of the general power and not of its exercise. Of its exercise we shall presently speak. As a judicial record imports absolute verity it ought, upon principle, to be within the power of a court, either in term, or after the term, to make true in fact what is so in theory. But whatever doubts there may be as to the origin, source or nature of the power there can be none as to its existence. Upon this subject there is a vast wealth of authority, and a multitude of cases might be collected with little labor.[1] It is to be kept in mind that the power to make *nunc pro tunc* orders and entries does not embrace the authority to make an entirely new decision or judgment. The theory upon which the right to make such orders or entries is that the decision or judgment was actually given by the court, so that a new and

[1] Adams *v.* ReQua, 22 Fla. 250, S. C. 1 Am. St. R. 191; Stillwell *v.* Carpenter, 62 N. Y. 639; Shand *v.* Hanley, 71 N. Y. 319; Snead *v.* Coleman, 7 Gratt. 300, S. C. 56 Am. Dec. 112; Sanders *v.* Williams, 75 Ga. 283; Williams *v.* Hayes, 68 Wis. 248, S. C. 32 N. W. R. 44; Tucker *v.* New Brunswick, etc., Co., L. R. 44 Ch. Div. 249; Farley *v.* Cammann, 43 Mo. App. 168; Mitchell *v.* Overman, 103 U. S. 62; Ellis *v.* Ewbank, 3 Scam. 190; Reid *v.* Morton, 119 Ill. 118, S. C. 6 N. E. R. 424; Chichester *v.* Cande, 3 Cowen, 50, S. C. 15 Am. Dec. 238; Close *v.* Gillespey, 3 Johns. 526; Bramblett *v.* Pickett, 2 A. K. Mar. 10, S. C. 12 Am. Dec. 350; Sexton *v.* Bennett, 63 Hun, 624, S. C. 17 N. Y. Supp. 437; Southern Kansas Co. *v.* Brown, 44 Kan. 681, S. C. 24 Pac. R. 1100; Jenkins *v.* Davis, 141 Pa. 266, S. C. 21 Atl. R. 592; Mannion *v.* Broadway, etc., Co., 13 N. Y. S. 759; Winston *v.* Mitchell, 93 Ala. 554, S. C. 9 So. R. 551; Corn Exchange Bank *v.* Blye, 119 N. Y. 414, S. C. 23 N. E. R. 805; Barber *v.* Briscoe, 9 Mont. 341, S. C. 23 Pac. R. 726; Clevenger *v.* Hansen, 44 Kan. 182, S. C. 24 Pac. R. 61; Brownlee *v.* Davidson, 28 Neb. 785, S. C. 45 N. W. R. 51; Keene *v.* Welch, 8 Mont. 305, S. C. 21 Pac. R. 25; Gay *v.* Hebert, 44 La. Ann. 301, S. C. 10 So. R. 775; Becker *v.* Simons, 33 Neb. 680, S. C. 50 N. W. R. 1129; Hiawatha Tp. *v.* Schoolcraft, 90 Mich. 270, S. C. 51 N. W. R. 282; McClure *v.* Bruck, 43 Minn. 305, S. C. 45 N. W. R. 438; Brooks *v.* Stephens, 100 N. C. 297, S. C. 6 S. E. R. 81; *Ex parte* Henderson, 84 Ala. 36, S. C. 4 So. R. 284.

independent ruling or decision can not be created now for then.[1] If the entry expresses the decision, or judgment rendered or correctly states the ruling made, it can not be changed by a *nunc pro tunc* entry, for a revision or review of a judgment or decision can not be secured in that mode.[2] The decisions referred to in the notes to this paragraph illustrate the application of the general rule, and indicate its extent and practical operation. It has been applied to cases of almost every conceivable character. It has been liberally applied to uphold deeds executed under the order of courts and has been wisely made the instrument of supporting titles and preventing hardship and injustice.[3] In the class of cases just referred to the lapse of time is a far less important factor than it is in ordinary cases, for the courts have allowed entries to be made confirming deeds after the lapse of many years. Recitals omitted by mistake in criminal cases may be supplied by entries now for

[1] In Martin *v.* St. Louis, etc., Co., 53 Ark. 250, S. C. 13 S. W. R. 765, the court said: "It is not the office of an amendment to create or originate something new, but only to perfect that which is imperfectly done." A similar doctrine is asserted in Kirby *v.* Bowland, 69 Ind. 290, where it was said: "A court may record a fact *nunc pro tunc*, that is, if the fact existed then it may be recorded now, but it can not record a fact now which did not exist then, and there must be some record, note, entry, or minute of some kind on which to base it, connecting it with the case." To a similar effect is the case of Bramlett *v.* Pickett, 2 A. K. Marsh. 10, S. C. 12 Am. Dec. 350. In the case of Hickman *v.* City of Fort Scott, 141 U. S. 415, it was said: "Nothing was omitted from the record of the original action which the court intended to make a matter of record. The case, therefore, does not come within the rule that a court, after the expiration of the term, may, by an order *nunc pro tunc*, amend the record by inserting what had been omitted by the act of the clerk or of the court." *In re* Wright, 134 U. S. 136; Fowler *v.* Trust Co., 12 Sup. Ct. R. 1; Galloway *v.* McKeithen, 5 Ire. 12; Hyde *v.* Curling, 10 Mo. 359.

[2] Garrison *v.* People, 6 Neb. 274; Moore *v.* State, 63 Ga. 165; Adams *v.* Higgins, 23 Fla. 13, S. C. 1 S. R. 321; Hyde *v.* Curling, 10 Mo. 359; Strange *v.* Tyler, 95 Ind. 396; Bole *v.* Newberger, 81 Ind. 274; Gray *v.* Brignardello, 1 Wall. 627; Whitwell *v.* Emory, 3 Mich. 84, S. C. 59 Am. Dec. 227; Smith *v.* Hood, 25 Pa. St. 218; *In re* Inhabitants of Limerick, Petitioners, 18 Me. 183; Harris *v.* Tomlinson, 130 Ind. 426.

[3] *In re* Harvey, 16 Ill. 127; Morgan's Appeal, 110 Pa. St. 271, S. C. 4 Atl. R. 506; Camden *v.* Plain, 91 Mo. 117, S. C. 4 S. W. R. 86; Moody *v.* Butler, 63 Texas, 210, 212.

then.[1] Where the delay in entering judgment arises from the act of the court it may be entered as of the date on which it ought to have been placed of record.[2] This rule rests upon the fundamental principle that the act of a judge shall prejudice no man. The class of cases under immediate mention may be regarded as in some measure different from the ordinary case of an omission to properly record or register what was actually done by the court. The courts of law in establishing and applying the doctrine we are here considering proceed upon a principle closely akin to that of equity expressed in the maxim, that equity regards that as done which ought to have been done. The implied, though not expressed, assumption is that the court ought to have entered the judgment of record at a time when it would protect the interests of the parties and prevent injustice. The principal class of cases in which this doctrine is applied is that wherein one of the parties to the suit dies before the formal entry of judgment.[3] It is well settled, however, that the doctrine of formally entering a judgment now for then does not authorize an entry in any case at a stage earlier than that at which the parties were rightfully entitled to judgment. The proceeding must have so far progressed as to entitle the applicant for a *nunc pro tunc* entry to

[1] *Ex parte* Beard, 41 Texas, 234; Smith *v.* State, 1 Texas App. 408; *Ex parte* Jones, 61 Ala. 399; Benedict *v.* State, 44 Ohio St. 679.

[2] Gray *v.* Brignardello, 1 Wall. 627; Mitchell *v.* Overman, 103 U. S. 65; Ætna Ins. Co. *v.* Boon, 95 U. S. 117; Heathcote *v.* Wing, 11 Exch. 355; Freeman *v.* Tranah, 12 Com. B. 406; Fishmongers Co. *v.* Robertson, 3 Com. B. 970; Wilson *v.* Myers, 4 Hawks, 73, S. C. 15 Am. Dec. 510; McLean *v.* State, 8 Heisk. 22; Campbell *v.* Meseir, 4 Johns. Ch. 335, S. C. 8 Am. Dec. 570; Mitchell *v.* Schoonover, 16 Or. 211, S. C. 8 Am. St. R. 282; Jarrett's Estate, 42 Ohio St. 199; Wood *v.* Keyes, 6 Paige, 478; Hess *v.* Cole, 23 N. J. L. 116; Perry *v.* Wilson, 7 Mass. 393.

[3] Citizens' Bank *v.* Brooks, 23 Fed. R. 21; Richardson *v.* Green, 130 U. S. 104; Snow *v.* Carpenter, 54 Vt. 17; Skidaway, etc., Co. *v.* Brooks, 77 Ga. 136; Page's Estate, 50 Cal. 40; Witten *v.* Robison, 31 Mo. App. 525; Goddard *v.* Bolster, 6 Me. 427, S. C. 20 Am. Dec. 320; Tapley *v.* Goodsell, 122 Mass. 176; Long *v.* Stafford, 103 N. Y. 275; Spalding *v.* Congdon, 18 Wend. 543; Dial *v.* Holter, 6 Ohio St. 228; Den *v.* Tomlin, 18 N. J. L. 14, S. C. 35 Am. Dec. 525; Currier *v.* Lowell, 16 Pick. 170; Bridges *v.* Smyth, 8 Bing. 29; Miles *v.* Williams, 9 Q. B. 47; Tapley *v.* Martin, 116 Mass. 275; Blaisdell *v.* Harris, 52 N. H. 191.

a final judgment, otherwise no such entry can be made although steps may have been taken, which if properly pursued would eventually authorize a final judgment. In short the case must have been in such a condition as to make a final judgment proper in due course.[1] Where the rights of innocent third parties have intervened, and it would be productive of injustice to them to make a *nunc pro tunc* order or entry, it will not be made, for the rights of such persons are paramount to those of the parties to the action or suit.[2] It is only where justice requires it, or, at least, sanctions it, that *nunc pro tunc* orders or entries will be made; and where equity requires it the court will make such orders and prescribe such terms as will prevent the order or entry from working injustice.[3] It is generally held that a *nunc pro tunc* order can not be made at the instance of a stranger to the record.[4] The general rule is that formal pleadings are not necessary, but that an informal motion properly suggesting the correction or entry desired, and the reasons therefor, is sufficient.[5] There is some diversity of opinion as to whether an order now for then can be made after the close of the term without notice.[6] We believe that notice

[1] Jennings *v.* Ashley, 5 Pike (Ark.), 128; Hall *v.* Brown, 59 N. H. 198; Hazard *v.* Durant, 14 R. I. 25; Perkins *v.* Dunlavy, 61 Texas, 241.

[2] Ninde *v.* Clark, 62 Mich. 124, S. C. 4 Am. St. R. 823; Bank of Newburgh *v.* Seymour, 14 Johns. 219; Smith *v.* Hood, 25 Pa. St. 218, S. C. 64 Am. Dec. 692; Miller *v.* Wolf, 63 Iowa, 233; Galpin *v.* Fishburne, 3 McCord, 22 S. C. 15 Am. Dec. 614.

[3] Graham *v.* Linn, 4 B. Mon. 17, S. C. 39 Am. Dec. 493; McCormick *v.* Wheeler, 36 Ill. 114; Hays *v.* Miller, 1 Wash. Ter. 163; Jordan *v.* Petty, 5 Fla. 326. See, generally, Leonard *v.* Broughton, 120 Ind. 536, S. C. 16 Am. St. R. 347.

[4] Runnels *v.* Kaylor *et al.*, 95 Ind. 503, 507; Rogers *v.* Abbott, 37 Ind. 138; Miller *v.* Kolb, 47 Ind. 220; Lewis *v.* Owen, 64 Ind. 446; Angle *v.* Speer, 66 Ind. 488; Conyers *v.* Mericles, 75 Ind. 443; Keepfer *v.* Force, 86 Ind. 81; Cassel *v.* Case, 14 Ind. 393.

[5] Gray *v.* Robinson, 90 Ind. 527; Sherman *v.* Nixon, 37 Ind. 153; Hughes *v.* Hinds, 69 Ind. 93; Miller *v.* Royce, 60 Ind. 189; Urbanski *v.* Manns, 87 Ind. 585.

[6] Berthold *v.* Fox, 21 Minn. 51; King *v.* Burnham, 129 Mass. 598; Hill *v.* Hoover, 5 Wis. 386; Weed *v.* Weed, 25 Conn. 337; Alexander *v.* Stewart, 23 Ark. 18; Cook *v.* Wood, 24 Ill. 295; Means *v.* Means, 42 Ill. 50; Wallis *v.* Thomas, 7 Vesey, Jr., 292; Rockland Water Co. *v.* Pillsbery, 60 Me. 425; Weed *v.* Weed, 25 Conn. 337; Wooster *v.* Glover, 37 Conn. 315; Poole *v.* McLeod, 1 Sm. & Mar. 391; McNairy *v.* Castleberry, 6 Texas, 286; Wheeler *v.* Goffe, 24 Texas, 660; Smith *v.* Myers, 5 Blackf. 223; Bales *v.* Brown, 57 Ind.

is required, and we believe also that the better and safer practice is to require notice where the order is a material one, and is made after the final judgment although made in term. It seems to us that when final judgment is entered parties have a right to act upon the theory that the particular case is at an end, and that they are not under a duty to remain in attendance or take notice of the proceedings. There is reason for holding, as some of the courts have held, that where the motion relates to mere matters of form, and is made during the term, no notice is required;[1] but this is, as we believe, going quite far enough. Parties have a right, within reasonable limits, to rely upon the record, and it should not be changed without notice, since a change may materially affect the rights of parties, and exert an important influence upon their conduct. A reasonable notice is all that is required, and, as the proceedings are of a summary character, a notice of a very few days may be regarded as sufficient.[2] There is a stubborn conflict in the authorities as to whether parol evidence is competent, some of the cases holding it competent but not of itself sufficient, while other cases adjudge it to be totally inadmissible, and still others hold it competent and sufficient.[3] A motion for a *nunc pro tunc*

282; Burnside *v.* Ennis, 43 Ind. 411; Swift *v.* Allen, 55 Ill. 303; Martin *v.* Bank, 20 Ark. 636. *Contra*, Mays *v.* Hassell, 4 Stew. & Port. (Ala.) 222, S. C. 24 Am. Dec. 750; Bentley *v.* Wright, 3 Ala. 607; Allen *v.* Bradford, 3 Ala. 281; Nabers *v.* Meredith, 67 Ala. 333; Long *v.* Stafford, 103 N. Y. 247, S. C. 8 N. E. R. 522. See, generally, Fugua *v.* Carriel, 1 Miner, 170, S. C. 12 Am. Dec. 46; Estate of Cook, 77 Cal. 220, S. C. 11 Am. St. R. 267; Emery *v.* Whitwell, 6 Mich. 491; People *v.* McCutchen, 40 Mich. 244.

[1] Balch *v.* Shaw, 7 Cush. 282.

[2] Latta *v.* Griffith, 57 Ind. 329.

[3] Mitchell *v.* Lincoln, 78 Ind. 531; Jenkins *v.* Long, 23 Ind. 460; Brownlee *v.* Board, 101 Ind. 401; Frink *v.* Frink, 43 N. H. 508, S. C. 80 Am. Dec. 189; Rugg *v.* Parker, 7 Gray, 172; Jacobs *v.* Burgwyn, 63 N. Car. 193; Aydelotte *v.* Brittain, 29 Kan. 98; Boyd *v.* Blaisdell, 15 Ind. 73; *In re* Wight, 134 U. S. 136; Fay *v.* Wenzell, 8 Cush. 315; Rugg *v.* Parker, 7 Gray, 172; Adams *v.* ReQua, 22 Fla. 250; Draughan *v.* Bank, 1 Stew. 66, S. C. 18 Am. Dec. 38; Hudson *v.* Hudson, 20 Ala. 364, S. C. 56 Am. Dec. 200; Lilly *v.* Larkin, 66 Ala. 122; Shackleford *v.* Levy, 63 Miss. 125; Raymond *v.* Smith, 1 Met. (Ky.) 65, S. C. 71 Am. Dec. 458; Hegeler *v.* Henckell, 27 Cal. 491; Blize *v.* Castlio, 8 Mo. App. 290; Atkinson *v.* Railroad, 81 Mo. 50; Ludlow *v.* Johnson, 3 Ohio, 553, S. C. 17 Am. Dec. 609; Coughran *v.* Gutcheus, 18 Ill. 390; Gibson *v.* Chouteau, 45 Mo. 171, S. C. 100 Am.

entry has been held to be part of the principal case, and that as part of the principal case it may be regarded and considered on appeal;[1] but this doctrine is limited in its scope, and can not be so extended as to embrace a distinct and independent proceeding. It has been held that where the application is an independent one, and not auxiliary to a principal case, an appeal will lie directly from the decision on the application for a *nunc pro tunc* order or entry.[2] It must, as we suppose, be true that there are cases in which the only question in the proceeding is as to the right to make such an order or entry, and where this is so, the decision is an independent one, and so far final in its character as to entitle a party to appeal from it.

§ 193. **Control of process—Interference of other courts.**—The rule is that every court controls its own process.[3] If it were otherwise confusion and conflict would necessarily result. But while the rule is as we have stated it, there are exceptions

Dec. 366; Means *v.* Means, 42 Ill. 50; Clark *v.* Lamb, 8 Pick. 415, S. C. 19 Am. Dec. 332; Frink *v.* Frink, 43 N. H. 508, S. C. 80 Am. Dec. 189; Hollister *v.* The Judges, 8 Ohio St. 201, S. C. 70 Am. Dec. 100; Stockdale *v.* Johnson, 14 Iowa, 178; Galloway *v.* McKeithen, 5 Iredell, 12, S. C. 42 Am. Dec. 153; State *v.* King, 5 Iredell, 203; Doane *v.* Glenn, 1 Col. 417; Dickson *v.* Hoff, 3 How. (Miss.) 165; Boon *v.* Boon, 8 Sm. & Mar. 318; Saxton *v.* Smith, 50 Mo. 490; State *v.* Clark, 18 Mo. 432; Solomon *v.* Fuller, 14 Nev. 63; Giddings *v.* Giddings, 70 Iowa, 486.

[1] Harris *v.* Tomlinson, 130 Ind. 426, 429; Hamilton *v.* Burch, 28 Ind. 233; Seig *v.* Long, 72 Ind. 18; Hannah *v.* Dorrell, 73 Ind. 465; Tomlinson *v.* Harris, 130 Ind. 339.

[2] Walker *v.* State, 102 Ind. 502; Tomlinson *v.* Harris, 130 Ind. 339. As to the practice in presenting questions on appeal, see Blizzard *v.* Blizzard, 40 Ind. 344; Runnels *v.* Kaylor, 95 Ind. 503; Jenkins *v.* Long, 23 Ind. 460; Corwin *v.* Thomas, 83 Ind. 110; Ellis *v.* Keller, 82 Ind. 524; Conway *v.* Day, 79 Ind. 318; Chissom *v.* Barbour, 100 Ind. 1; Wilcox *v.* Majors, 88 Ind. 203. Whether sufficient cause is shown to justify an entry of a *nunc pro tunc* order is held to be an issue of fact in Brown *v.* West, 65 N. H. 187, S. C. 18 Atl. R. 233. A judge in office may correct a clerical error of his predecessor by a *nunc pro tunc* entry. Henlein *v.* Graham, 32 S. Car. 303, S. C. 10 S. E. R. 1012.

[3] Grant *v.* Quick, 5 Sandf. 612; Bennett *v.* LeRoy, 5 Abb. Pr. R. 55; The Indiana, etc., Co. *v.* Williams, 22 Ind. 198; Gregory *v.* Purdue, 29 Ind. 66; Coleman *v.* Barnes, 33 Ind. 93; Wiley *v.* Pavey, 61 Ind. 457; Plunkett *v.* Black, 117 Ind. 14, 18; Mallory *v.* Dauber, 83 Ky. 239. See, generally, Crawell *v.* Littlefield, 2 Rich. (S. Car.) 17; Pickett *v.* Filer, etc., Co., 40 Fed. R. 313; Tefft *v.* Sternberg, 40 Fed. 2; Gray *v.* Garnsey, 32 Me. 180.

to it as there are to almost all general rules. Equity will control the execution of the process where equitable grounds exist authorizing equitable interference, and the court issuing the process has no power to award adequate relief.

§ 194. **Control of property.**—Courts of equity jurisdiction may control property directly as well as parties. Every court of general jurisdiction may control property indirectly through its process, but courts of equity will take direct and immediate control of property through the medium of their agents or officers. Courts of law in some cases and for some purposes assume control of property as, for instance, in cases where it is seized under a writ of replevin, or where a fund is paid into court for distribution to heirs, devisees or legatees. But the powers of courts of equity are much broader and more comprehensive than those of the law courts. In case of insolvent's estates, and the like, the fund brought into court by payment to an agent or officer of the court is under the court's control. The strongest exercise of the power to control property is that of the appointment of receivers, for in such cases the dominion of the owner is wrested from him and vested in an officer or agent of the court. Property of every description may be placed in the hands of a receiver, and kept there as long as the interests of parties and creditors require. Under this high power courts have often seized extensive railway systems and placed them under the exclusive control of receivers, and, through the medium of those officers, operated railways for long periods of time. We do not intend to treat at length of the appointment, powers, duties and liabilities of receivers; for all that our present purpose requires, all, indeed, that would be here appropriate, is a bare outline of the leading principles bearing upon the general subject of receivers. A receiver is a part of the machinery of the court, and is appointed to preserve and protect the rights of all the parties in interest.[1]

[1] Merritt *v.* Lyon, 16 Wend. 421; Coleman *v.* Ormond, 60 Ala. 328; Booth *v.* Clark, 17 How. U. S. 321; Devendorf *v.* Dickinson, 21 How. Pr. R. 275; Waters *v.* Carroll, 9 Yerg. 102; Keeney *v.* Home Ins. Co., 71 N. Y. 396, S. C. 27 Am. R. 60.

A receiver is an agent of the court deriving his powers in the particular instance from the court appointing him and is under a duty to obey its orders. He is not the agent or representative of the parties, but is an impartial officer of the court holding his position and exercising his functions for the common good of all.[1] A receiver is sometimes said to be the "hand of the court,"[2] and this statement aptly denotes his office. As a receiver owes his position and is under a duty to the tribunal which appoints him, he can not transfer the property or fund placed in his custody to the control of any other court.[3] In strictness a person having an interest in the property or fund in controversy or in the result of the suit is not competent to hold the position of a reciver,[4] but the matter is in some measure one resting in the discretion of the court, and parties may waive objection because of interest.[5] A leading purpose in the appointment of a receiver is to protect and preserve the property or fund[6] and distribute it equitably to the parties entitled to it.[7] The power of appointing a receiver is a high one, and in the strictest sense of the term an exercise of extraordinary

[1] Curtis *v.* Leavitt, 1 Abb. Pr. 274; Corey *v.* Long, 43 How. Pr. 492; Meier *v.* Kansas Pacific Ry. Co., 5 Dill. (U. S. C. C.) 476; Osborn *v.* Heyer, 2 Paige, 342; Kaiser *v.* Kellar, 21 Iowa, 95; Hooper *v.* Urmston, 24 Ill. 353; Davis *v.* Duke of Marlborough, 2 Swans, 113; Williamson *v.* Wilson, 1 Bland (Md.), 418; Ellicott *v.* Warford, 4 Md. 80.

[2] Ellicott *v.* Warford, 4 Md. 80. See, generally, Runyon *v.* Farmers, etc., Bank, 3 Green. Ch. 480; Van Rensselaer *v.* Emery, 9 How. Pr. 135; Williamson *v.* Wilson, 1 Bland (Md.), 418.

[3] Reynolds *v.* Stockton, 43 N. J. Eq. 211, S. C. 3 Am. St. R. 305.

[4] Fripp *v.* Chard, etc., Co., 21 Eng. Law and Equ. 53; Atkins *v.* Wabash, etc., Co., 29 Fed. R. 161; Meier *v.* Kansas Pacific Ry. Co., 5 Dill. (U. S. C. C.) 476; *In re* Lloyd, L. R., 12 Ch. Div. 447; Benneson *v.* Bill, 62 Ill. 408; Taylor *v.* Life Association, 3 Fed. R. 465; Young *v.* Rollins, 85 N. Car. 485, S. C. 12 Am. and Eng. Ry. Cases, 455.

[5] Finance Co. of Pennsylvania *v.* Charleston, etc., Co., 45 Fed. R. 436; Shannon *v.* Hanks (Va.), 13 S. E. R. 437.

[6] Battle *v.* Davis, 66 N. Car. 252; Mays *v.* Rose, 1 Freeman's Ch. (Miss.) 703; Chase's Case, 1 Bland Ch. (Md.) 206, S. C. 17 Am. Dec. 277; Taylor *v.* Philadelphia, etc., Co., 7 Fed. R. 381; Ellis *v.* Boston, etc., Co., 107 Mass. 1; Latham *v.* Chafee, 7 Fed. R. 525.

[7] New Haven Wire Company Cases, 57 Conn. 352, S. C. 5 Law R. Anno. 300. See, also, Hanover, etc., Co. v. Germania, etc., Co., 33 Hun, 539; Benneson *v.* Bill, 62 Ill. 408; Bolles *v.* Duff, 54 Barb. 215.

jurisdiction. It is, therefore, reasonable and just to require a petitioner for a receiver to make a very strong case.[1] Courts are reluctant to appoint receivers upon *ex parte* petitions, and notice is required unless it clearly appears that to give notice would greatly imperil the interests of the parties. We think it may be safely affirmed that a receiver will not be appointed without notice unless an emergency is shown requiring immediate action to preserve rights of the parties.[2] It is generally held that a receiver can not be appointed until a suit has been commenced.[3] The order appointing a receiver is not decisive of the merits of the case, nor, indeed, of any other questions in it save the right to a receiver.[4] The court which first acquires jurisdiction and appoints a receiver takes control, through the medium of its agent or officer, of all the property involved in the controversy.[5]

[1] Blondheim *v.* Moore, 11 Md. 365; Clark *v.* Ridgely, 1 Md. Ch. 70; First National Bank *v.* Gage, 79 Ill. 207; Hyde Park, etc., Co. *v.* Kerber, 5 Ill. App. 132; Thompson *v.* Diffendoffer, 1 Md. Ch. 489; Walker *v.* House, 4 Md. Ch. 39; Speights *v.* Peters, 9 Gill (Md.), 472; Bill *v.* New Albany, etc., Co., 2 Biss. 390; Whitehead *v.* Wooten, 43 Miss. 523; Latham *v.* Chafee, 7 Fed. R. 525; Chicago, etc., Co. *v.* United States, etc., Co., 57 Pa. St. 83; Pullman *v.* Cincinnati, etc., Co., 4 Biss. 35.

[2] Grandin *v.* La Bar, 2 N. Dak. 206, S. C. 50 N. W. R. 151; Fredenheim *v.* Rohr, 87 Va. 764, 13 S. E. R. 193; Wabash, etc., Co. *v.* Dykeman, 133 Ind. 56, 32 N. E. R. 823; Chicago, etc., Co. *v.* Carson, 133 Ind. 49, 32 N. E. R. 827; State *v.* New Orleans, 43 La. Ann. 829, S. C. 9 S. R. 643; Verplanck *v.* Insurance Co., 2 Paige, 438; People *v.* Albany, etc., Co., 55 Barb. 344, 369; French *v.* Gifford, 30 Iowa, 148, 160; Bisson *v.* Curry, 35 Iowa, 72; Howe *v.* Jones, 57 Iowa, 130, S. C. 8 N. W. R. 451; Railway Co. *v.* Jewel, 37 Ohio St. 649; Briarfield, etc., Co. *v.* Foster, 54 Ala. 622; Word *v.* Word, 90 Ala. 81, S. C. 7 S. R. 412; Moritz *v.* Miller, 87 Ala. 331; S. C. 6 S. R. 269; Martin *v.* Tarver, 43 Miss. 517; Turnbull *v.* The Lumber Co., 55 Mich. 387, S. C. 21 N. W. R. 375; Jones *v.* Schall, 45 Mich. 379; Ruffner *v.* Mairs, 33 W. Va. 655; Moyers *v.* Coiner, 22 Fla. 422; Fricker *v.* Peters, 21 Fla. 254; Nusbaum *v.* Stein, 12 Md. 315; Johns *v.* Johns, 23 Ga. 31; Turgeau *v.* Brady, 24 La. Ann. 349; Weems *v.* Lathrop, 42 Texas, 207; Crowder *v.* Moone, 52 Ala. 221; People *v.* Norton, 1 Paige, 17; Devoe *v.* Ithaca, etc., Co., 5 Paige, 521.

[3] Gold Hunter, etc., Co. *v.* Holleman (Idaho), 27 Pac. R. 413; Guy *v.* Doak, 47 Kan. 236, S. C. 27 Pac. R. 968; Baker *v.* Backus, 32 Ill. 79; Merchants, etc., Bank *v.* Kent, 43 Mich. 292; Jones *v.* Schall, 45 Mich. 379; Hardy *v.* McClellan, 53 Miss. 507.

[4] Hottenstein *v.* Conrad, 9 Kan. 438; Fellows *v.* Heermans, 13 Abb. Pr. N. S. 1; McCarthy *v.* Peake, 18 How. Pr. 138; *In re* Cohen, 5 Cal. 494.

[5] Sedgwick *v.* Mench, 6 Blatchf. 156; Storm *v.* Waddell, 2 Sandf. Ch. 491;

§ 195. **Property in custodia legis.**—Property taken under an order of court or by virtue of the process of the court authorizing the seizure of the property by an officer is said to be *in custodia legis*.[1] Where property comes into the hands of an officer or agent of the court, and is there subject to the control of the court, it is in the strictest sense in the custody of the law.[2] The most familiar application of the rule is to cases where property or funds are in the hands of receivers. In such cases the property or fund is in legal custody, and is subject to the exclusive control of the tribunal that appointed the receiver and authorized him to take possession of the property.[3] There is much conflict in the cases as to when money or property in the hands of a ministeral officer can be regarded as *in custodia legis*. It has been held that where property is replevied and in the hands of the officer by virtue of the writ of replevin, it is in the custody of the law.[4] In another case it was held that where a delivery bond was given to the sheriff, the property was not taken out of the custody of the law, as the bond did not operate to withdraw the property from the officer acting under the process of the court.[5] The Court of Appeals of New York held in a comparatively recent case, that where a party

Watkins *v.* Pinkney, 3 Edw. Ch. 533; Spinning *v.* Ohio, etc., Co., 2 Disney (Ohio), 336; Hutchinson *v.* Green, 6 Fed. R. 833; May *v.* Printup, 59 Ga. 129.

[1] Gilman *v.* Williams, 7 Wis. 287.

[2] Adams *v.* Haskell, 6 Cal. 113.

[3] *In re* Merchants' Ins. Co., 3 Biss. (U. S. C. C.) 162; Angel *v.* Smith, 9 Ves. Jr. 335; Mays *v.* Rose, Freeman (Miss.), 703; Robinson *v.* Atlantic, etc., Co., 66 Pa. St. 160; Skinner *v.* Maxwell, 68 N. Car. 400; De Verser *v.* Blackstone, 6 Blatch. 235; *In re* Butler's Estate, 13 Ir. Ch. R. 456. As to when the title of a receiver attaches, see Rutter *v.* Tallis, 5 Sandf. (N.Y.) 610; Steele *v.* Sturgis, 5 Abb. Pr. R. 442; Maynard *v.* Bond, 67 Mo. 315; Artisans' Bank *v.* Treadwell, 34 Barb. 553; Cook *v.* Cole, 55 Iowa, 70; Phillips *v.* Smoot, 1 Mackey, 478.

[4] Pipher *v.* Fordyce, 88 Ind. 436, citing Stout *v.* La Follette, 64 Ind. 365; Hagan *v.* Lucas, 10 Pet. 400; Rhines *v.* Phelps, 3 Gilm. (Ill.) 455; Acker *v.* White, 25 Wend. 614; Selleck *v.* Phelps, 11 Wis. 380. See, generally, Wilder *v.* Bailey, 3 Mass. 289; Jones, etc., *v.* Case, 26 Kan. 299, S. C. 40 Am. R. 310; Brown *v.* Clarke, 4 How. 4; Freeman *v.* Howe, 24 How. (U. S.) 450; Turner *v.* Fendall, 1 Cranch, 117; Baker *v.* Kenworthy, 41 N. Y. 215; Wilder *v.* Bailey, 3 Mass. 289; Goodheart *v.* Bowen, 2 Bradw. (Ill. App.) 578.

[5] Wright *v.* Manns, 111 Ind. 422, citing Lusk *v.* Ramsey, 3 Munf. 417; Doremus *v.* Walker, 8 Ala. 194; Hagan *v.* Lucas, 10 Peters, 400.

deposited money with the clerk in lieu of an appeal bond, that the money was not *in custodia legis*, and was subject to attachment.[1] There are many cases holding that money or property in the hands of a sheriff, received by him under a writ or process of the court, is in the custody of the law;[2] but, it is to be observed, where the money or property ceases to be in the possession of the officer by virtue of an order of court, or under and pursuant to its process, it is no longer in the custody of the law in such a sense as to be free from a writ of attachment or execution.[3] A peculiar phase of the subject is exhibited by a case wherein it was held that land seized under a writ of attachment was in the custody of the law, and that a party who assumed to take a mortgage upon it was bound by the orders. It is well settled that where property is in the custody of the law, it can not be reached by the process of any other court than that which has control of it.[4] The decided weight of authority is that personal property in the hands of the sheriff un-

[1] Dunlop *v.* Patterson, 74 N. Y. 145. The court cited and commented upon the cases of Chealy *v.* Brewer, 7 Mass. 259; Bulkley *v.* Eckert, 3 Pa. St. 368; Coppel *v.* Smith, 4 T. R. 312; Pierce *v.* Charleton, 12 Ill. 358; Lightner *v.* Steinagel, 33 Ill. 510; Ross *v.* Clark, 1 Dallas (Pa.), 354; Crane *v.* Freese, 1 Harrison (N. J.), 305.

[2] Farr *v.* Newman, 4 T. R. 621; Turner *v.* Fendall, 1 Cranch, 117; Sharp *v.* Clark, 2 Mass. 91; Penniman *v.* Ruggles, 6 Mass. 166. See, generally, Staples *v.* Staples, 4 Greenl. 532; Farmers' Bank *v.* Beaston, 7 Gill. & J. 421; Overton *v.* Hill, 1 Murph. (N. Car.) 47; Blair *v.* Cantey, 2 Spear (S. Car.), 34; Jones *v.* Jones, 1 Bland Ch. (Md.) 443; Burrill *v.* Letson, 2 Spear (S. Car.), 378; Zurcher *v.* Magee, 2 Ala. 253; Drane *v.* McGavock, 7 Hump. 132; Clymer *v.* Willis, 3 Cal. 363; Hill *v.* La Crosse, etc., Co., 14 Wis. 291; Reddick *v.* Smith, 3 Scam. 451; Handy *v.* Dobbin, 12 Johns. 220.

[3] Robertson *v.* Beall, 10 Md. 125; Cole *v.* Wooster, 2 Conn. 203; Pierce *v.* Charleton, 12 Ill. 358; Dickison *v.* Palmer, 2 Rich. Eq. (S. Car.) 407; Wheeler *v.* Smith, 11 Barb. 345; Watson *v.* Todd, 5 Mass. 271; King *v.* Moore, 6 Ala. 160; Jaquett *v.* Palmer, 2 Harr. (Del.) 144; Hearn *v.* Crutcher, 4 Yerg. 461; Tucker *v.* Atkinson, 1 Hump. 300; New Haven, etc., Co. *v.* Fowler, 28 Conn. 103. See, as to the right of sheriff to apply money, Thompson *v.* Brown, 17 Pick. 462; Dawson *v.* Holcombe, 1 Ohio, 275; Muscott *v.* Woodworth, 14 How. Pr. R. 477; Prentiss *v.* Bliss, 4 Vt. 513, S. C. 24 Am. Dec. 631; Winton *v.* State, 4 Ind. 321.

[4] Fort Wayne, etc., Co. *v.* Mellett, 92 Ind. 535; Wiswell *v.* Sampson, 14 How. (U. S.) 52; Pipher *v.* Johnson, 108 Ind. 401. The authorities we have cited in the notes to this paragraph all sustain this general doctrine.

der a levy made upon execution is *in custodia legis*, and can not be seized upon other writs of a similar character.[1] Where money is in the possession of a master in chancery subject to the control of the court, and not directed to be paid to the parties, it is in the custody of the law; but where there is an order directing payment to the parties, it is held that the money ceases to be held by the master as the officer of the court, and hence is not in the custody of the law.[2] The rule that property or money in the hands of an officer or agent of the court is *in custodia legis*, is far reaching, and embraces almost every conceivable case wherein possession is held pursuant to an order of court. It embraces trustees, assignees, and all officers of like character in the attachment proceedings.[3] Money or property in the hands of a clerk,[4] justice of the peace,[5] commissioner, or of any other officer or agent of the court, and subject to the control of the court, or held in a strictly official character, or in the character of the representative or instrument of the court, is always regarded as *in custodia legis*.[6] The

[1] Armistead *v.* Philpot, 1 Doug. 231; Fieldhouse *v.* Croft, 4 East. 510; Jones *v.* Jones, 1 Bland Ch. 443, S. C. 18 Am. Dec. 327; Vinton *v.* Bradford, 13 Mass. 114, S. C. 7 Am. Dec. 119; Bagley *v.* White, 4 Pick. 395; Draper *v.* Arnold, 12 Mass. 449; Robinson *v.* Ensign, 6 Gray, 300; Harbison *v.* McCartney, 1 Grant, 172; Oldham *v.* Scrivener, 3 B. Monr. 579; Moore *v.* Graves, 3 N. H. 408; Burroughs *v.* Wright, 16 Vt. 619; Odiorne *v.* Colley, 2 N. H. 66, S. C. 9 Am. Dec. 39. *Contra*, Benson *v.* Berry, 55 Barb. 620; Dolby *v.* Mullins, 3 Hump. (Tenn.) 437, S. C. 89 Am. Dec. 180.

[2] Weaver *v.* Davis, 47 Ill. 235; McKenzie *v.* Noble, 13 Rich. (S. Car.) 147. See, generally, Daley *v.* Cunningham, 3 La. Ann. 35; Gaither *v.* Ballew, 4 Jones, 488.

[3] Fee *v.* Moore, 74 Ind. 319.

[4] Alston *v.* Clay, 2 Hayw. (N. Car.) 171; Sibert *v.* Humphries, 4 Ind. 481; Murrell *v.* Johnson, 3 Hill. (S. Car.) 12; Bowden *v.* Schatzell, Bailey Equ. (S. Car.) 360; Overton *v.* Hill, 1 Murph. 47; Hunt *v.* Stevens, 3 Ired. 365; Ross *v.* Clarke, 1 Dall. 354; Hanna *v.* Bry, 5 La. Ann. 651.

[5] Hooks *v.* York, 4 Ind. 636; Corbyn *v.* Bollman, 4 W. & S. 342. See Clark *v.* Boggs, 6 Ala. 809.

[6] Croman's Case, 11 Pa. Co. Ct. R. 44; Thayer *v.* Tyler, 5 Allen, 94; Bentley *v.* Shrieve, 4 Md. Ch. Dec. 412; Cockey *v.* Leister, 12 Md. 124; Colby *v.* Coates, 6 Cush. 558; Dewing *v.* Wentworth, 11 Cush. 499; Oliver *v.* Smith, 5 Mass. 183; Farmers' Bank *v.* Beaston, 7 Gill. & J. 421; Brooks *v.* Cook, 8 Mass. 246; Marvel *v.* Huston, 2 Harr. (Del.) 349; Thorn *v.* Woodruff, 5 Ark. 55; Fowler *v.* McClelland, 5 Ark. 188; Hancock *v.* Titus, 39 Miss. 224; Gee *v.* Warrick, 2 Hay. (N. Car.) 354; Hartle *v.* Long, 5 Pa. St. 491; Bivens *v.* Harper, 59 Ill. 21; Conway

rule we are considering is necessary to prevent conflict between the courts, and to enable the tribunal having in charge the fund or property to dispose of it without interference. It is, also, essential to the independence of the court, since its independence would be practically destroyed if another tribunal could control or interfere with its agents or officers. The rule is one of great practical value, and rests upon sound principles, so that it is one to be enlarged in its operation rather than restricted.

§ 196. **Ministers of the court.**—According to Francis Bacon the officers who are appointed to assist judges and chancellors in their judicial duties are "ministers of the court." They are not judges in the true sense of the term, although they exercise duties of a judicial nature. They do not possess the power of ultimate decision, for that power must reside in the duly appointed or duly elected judge or chancellor. Judicial duties can not be delegated, and the power of giving the ultimate decision or judgment must reside in the officers composing the courts of justice, since only courts can speak the final and authoritative words of the law which determine the rights of litigants. Proceedings before ministers of the court, such as masters in chancery and master commissioners, are ancillary, and not final, since the final decision must be pronounced by the court, and not by its officers or assistants. Officers and assistants may convey information to the court either upon matters of fact or of law, but even this they can not do in matters which require the direct investigation and decision of the duly

v. Armington, 11 R. I. 116; Winchell *v.* Allen, 1 Conn. 385; Beckwith *v.* Baxter, 3 N. H. 67; Woodward *v.* Woodward, 4 Halst. (N. J.) 115; Gassett *v.* Grout, 4 Met. 486; Davis *v.* Drew, 6 N. H. 399; Vierheller *v.* Brutto, 6 Ill. App. 95. See, generally, Mann *v.* Kelsey, 71 Texas, 609, S. C. 12 S. W. R. 43; Parler *v.* Johnson, 81 Ga. 254; McPherson *v.* Snowden, 19 Md. 197; Groome *v.* Lewis, 23 Md. 137; Carney *v.* Dewing, 10 Cush. 498; Massachusetts, etc., Bank *v.* Bullock, 120 Mass. 86; Schlueter *v.* Raymond, 7 Neb. 281; Todd *v.* Buckman, 11 Me. 41; Leeds *v.* Sayward, 6 N. H. 83; Copeland *v.* Weld, 8 Me. 411; Stratton *v.* Ham, 8 Ind. 84; Godbold *v.* Bass, 12 Rich. (S. Car.) 202; Hansen *v.* Butler, 48 Me. 81; Shewell *v.* Keen, 2 Whart. (Pa.) 332; Perry *v.* Thornton, 7 R. I. 15.

appointed or elected judge. As the judiciary is a separate and independent department of the government, vested with an element of sovereign power, it is not, in our opinion, competent for any other department to determine who its ministers shall be. No court can be independent that is compelled to accept as its ministers persons appointed by some other department. The right to choose its own assistants is essential to the independence of the judiciary, and the denial of this right involves the assertion that other governmental departments are the rulers of the judiciary in its own domain. We are aware that there is some diversity of opinion upon the subject of the right of a court to appoint its ministers, but we can not avoid the conclusion that to yield to other departments the right to choose the ministers of the courts is a complete and indefensible surrender of judicial independence. Among the ministers of the court masters in chancery are the oldest. Masters in chancery were appointed by the English courts of equity in the early years of their existence. It was comparatively a short time after the chancellors of England established the court of chancery that masters in chancery were appointed to assist the court. A master in chancery or a master commissioner should be free from bias or prejudice, and an interest in the suit or action will disqualify a person from assuming the functions of a master.[1] Ministers of court to whom matters are referred are controlled by the order of the court in the particular case,[2] and where the order requires a report of the evidence, it is the duty of the master to report it; but where the order does not require a report of the evidence, it is, as a general rule, sufficient to report the facts. Where there is a general order referring a matter to a master, the facts should be reported so that the

[1] Brown *v.* Byrne, Walker's Ch. 453. An officer of the court prohibited by statute or by rule of the court is incompetent to act as a master. Fisher *v.* Hayes, 22 Blatchf. 505.

[2] Simmons *v.* Jacobs, 52 Me. 147; McNaught *v.* McAllister, 93 Ind. 114; Updike *v.* Doyle, 7 R. I. 446, 458; Lonsdale *v.* Moies, 2 Cliff. (U. S. C. C.) 538; Blauvelt *v.* Ackerman, 20 N. J. Eq. 141; Hays *v.* Hays, 64 N. Car. 59. See, generally, Emerson *v.* Atwater, 12 Mich. 314; Howe *v.* Russell, 36 Me. 115; Mason *v.* New York, etc., Co., 52 Me. 82; Cary *v.* Herrin, 62 Me. 16; Arnold *v.* Slaughter, 36 W. Va. 589, S. C. 15 S. E. R. 250; Lee *v.* State, 88 Ind. 256.

court may give the ultimate decision upon them.[1] The substantive facts should be stated, and not simply the master's deductions from them, inasmuch as the judgment of the court must rest upon the facts, and not upon the mere conclusions of the master.[2] The master's duty, in the absence of specific directions in the order, is to ascertain and state the controlling matters of fact and of law, for the information of the court.[3] The report of a master is regarded in many respects as the verdict of a jury, and rules applicable to verdicts are applied to reports of masters.[4] Objections to references to masters are required to be promptly made, and if the disqualification of the person named as a master is known the objection must be opportunely interposed.[5] In order to make objections available on appeal, they must be appropriately presented to the trial court; thus, for instance, an objection that no order of reference was made will not avail on appeal unless it appears that it was presented to the trial court at the proper time.[6]

§ 197. **Officers of court.**—Courts are usually provided with ministerial officers, and if all courts were presided over by of-

[1] Skinner *v.* Conant, 2 Vt. 453, S. C. 21 Am. Dec. 554. See Phillip's Appeal, 68 Pa. St. 130; Clark's Appeal, 62 Pa. St. 447; Backus' Appeal, 58 Pa. St. 186, 192; Tilghman *v.* Proctor, 125 U. S. 136; Hurdle *v.* Leath, 63 N. C. 366. See, generally, Gage *v.* Arndt, 121 Ill. 491; Field *v.* Holland, 6 Cranch. 8; McAlister *v.* Olmstead, 1 Hump. (Tenn.) 210.

[2] De Treville *v.* Ellis, 1 Bailey Equ. (S. Car.) 35, S. C. 21 Am. Dec. 518; Clark's Appeal, 62 Pa. St. 447; Parker *v.* Nickerson, 137 Mass. 487; Nims *v.* Nims, 20 Fla. 204; Frazier *v.* Swain, 36 N. J. Eq. 156. See, generally, Trigg *v.* Trigg (Texas), 18 S. W. R. 313; Evans *v.* Evans, 2 Cold. (Tenn.) 143; Herrick *v.* Belknap, 27 Vt. 673.

[3] Furrer *v.* Ferris, 145 U. S. 132.

[4] Izard *v.* Bodine, 9 N. J. Eq. 309; Sproull's Appeal, 71 Pa. St. 137. See, generally, White *v.* Hampton, 10 Iowa, 238; Stimson *v.* Green, 13 Allen, 326; Pierce *v.* Faunce, 53 Me. 351; State *v.* McIntyre, 53 Me. 214.

[5] Green *v.* Richmond, 155 Mass. 188, S. C. 29 N. E. R. 770; Starke *v.* Richmond, 155 Mass. 188, S. C. 29 N. E. R. 770; Baird *v.* Mayor, 74 N. Y. 382; Trenholm *v.* Morgan, 28 S. Car. 268, S. C. 5 S. E. R. 721; Grant *v.* Reese, 82 N. Car. 72; Harris *v.* Schaffer, 92 N. C. 30. See, generally, Allis *v.* Day, 14 Minn. 516; Strong *v.* Willey, 104 U. S. 512; Rhodes *v.* Russell, 32 S. Car. 585, S. C. 10 S. E. R. 828; Houser *v.* Roth, 37 Ind. 89.

[6] In Spencer *v.* Levering, 8 Minn. 461, 467, the court said: "The other point made by the plaintiff in error, to wit, that the record does not show an order referring the cause to a referee for trial, should have been urged in the court below, it can not be made here for the first time."

ficers who are, in strictness, judges, it would be impossible to conceive of a court having no ministerial officers, since, under our system of government, judges can not perform purely ministerial duties. If the theory of our governmental system were adhered to with rigid strictness, the officers invested with judicial functions could not perform ministerial or executive duties. But long usage has given an exposition to our constitutions which can not be disregarded, for contemporaneous exposition has, in many instances, the force of positive law.[1] This long continued and uniform usage has given to such officers as county commissioners, members of the board of supervisors, and the like, the character of judges in a qualified and limited degree. In nearly all, if not in all, of the States, boards of supervisors, boards of county commissioners, and the like, have been recognized as courts. But, while this is true, it is also true that such officers are charged with purely ministerial duties, and invested with functions belonging only to ministerial or administrative offices. Such officers have a dual character, for, in one capacity they act ministerially and in another judicially. They have, indeed, many characters.[2] Courts of a

[1] Rogers *v.* Goodwin, 2 Mass. 475; Bruce *v.* Schuyler, 4 Gilm. (Ill.) 221; Ogden *v.* Saunders, 12 Wheat. 213, 290; Minor *v.* Happersett, 21 Wall. 162; State *v.* Parkinson, 5 Nev. 15; Pike *v.* Megoun, 44 Mo. 491; People *v.* Board, 100 Ill. 495; State *v.* French, 2 Pinn. (Wis.) 181; Martin *v.* Hunter, 1 Wheat. 304; Cohens *v.* Virginia, 6 Wheat. 264; Stuart *v.* Laird, 1 Cranch. 299; Board, etc., *v.* Bunting, 111 Ind. 143; Weaver *v.* Templin, 113 Ind. 298, 301; Hovey *v.* State, 119 Ind. 386.

[2] State *v.* Ormsby County, 7 Nev. 392; Andrews *v.* Pratt, 44 Cal. 309; Supervisors *v.* South Ottawa, 12 Ill. 480; State *v.* Saline County, 18 Neb. 422; Jackson *v.* Hartwell, 8 Johns. (N. Y.) 422; Miller *v.* Supervisors, 25 Cal. 93; People *v.* Schenectady, 35 Barb. 408; Sterling *v.* Parish, 26 La. Ann. 59; Hawkins *v.* Carroll, 50 Miss. 735; West *v.* Burke, 60 Texas, 51; Douglass *v.* County of Baker, 23 Fla. 419, S. C. 2 So. R. 776; Brewer *v.* Railroad Co., 113 Mass. 52; Argo *v.* Barthand, 80 Ind. 63; Town of Cicero *v.* Williamson, 91 Ind. 541; Blanchard *v.* Bissell, 11 Ohio St. 96; La Pointe Supervisors *v.* O'Malley, 47 Wis. 332; People *v.* Carpenter, 24 N. Y. 86; People *v.* Supervisors, 65 N. Y. 222; People *v.* Hagadorn, 104 N. Y. 516; Board *v.* Montgomery, 106 Ind. 517; Weir *v.* State, 96 Ind. 311. The cases to which we have referred, and a multitude more which might easily be added, show that county boards act in legislative, judicial and ministerial capacities, and yet when they act judicially, that is, as courts, their judgments can not be collaterally impeached, and that they will sustain a plea of former adjudications. Such tribunals are pe-

higher rank than boards of county commissioners, county supervisors, or the like, could not perform their duties nor accomplish the object for which they were created without the aid of ministerial officers, for without such officers they would be unable to carry into effect their judgments or decrees, or to serve or execute their process. Even such subordinate courts as those composed of county supervisors, county commissioners, or the like, are aided and served by officers whose duties are purely ministerial. It is true of courts generally, that they are in part composed of ministerial officers, but the important part of all courts is the judicial officer, for without that officer the court could not exist.[1]

§ 198. **Officers of court—Power to appoint.**—It is undoubtedly true that the power to appoint to office is in its nature an executive power,[2] but it is by no means purely executive. It can not be doubted that the legislature may appoint such officers as are required to enable it to perform its duties and transact its business, as, for instance, secretaries, clerks, sergeants-at-arms, and the like, although the general appointing power may be lodged in the chief executive by the constitution of the State.[3] This is so, for the reason that each department of the

culiar organizations, and possess manifold and diverse powers, such as could not be combined in any other tribunals.

[1] Many of the subordinate officers of courts are known by different titles in different jurisdictions, but the titles "sheriff" and "constable" are almost universally used in England and in the United States. The officers usually forming a part of the court are those named and clerks, prothonotaries, or registrars, bailiffs, criers and tipstaves. Attorneys, counselors, solicitors and barristers are officers of the court, but the relation they sustain to the court is quite different from that of the officers we have named.

[2] Taylor *v.* Commonwealth, 3 J. J. Marsh. 401; State *v.* Barbour, 53 Conn. 76; Ackley's Case, 4 Abbott's Pr. R. 35.

[3] Unless the constitution does invest the chief executive of the State with the appointing power or place it elsewhere, the legislature may, according to the overwhelming weight of authority, exercise it. Hovey *v.* Carson, 119 Ind. 395; Collins *v.* State, 8 Ind. 344; State *v.* Harrison, 113 Ind. 434; Hovey *v.* Riley, 119 Ind. 386; People *v.* Langdon, 8 Cal. 1; People *v.* Hurlbut, 24 Mich. 44; Field *v.* People, 2 Scam. 79; State *v.* Irwin, 5 Nev. 111; State *v.* Swift, 11 Nev. 128; Biggs *v.* McBride, 17 Ore. 640, S. C. 21 Pac. R. 878; Mayor *v.* State, 15 Md. 376; State *v.* Lusk, 18 Mo. 333; Bridges *v.* Shalleross, 6 W. Va. 562; Walker

government must, in order to maintain its independence and discharge its duties, have the right to choose its own immediate ministers and agents. The principle applies to the judicial as well as to the other departments of the government. It seems clear to us that the court may appoint its own immediate ministers or agents. So it has been held,[1] and so it must be held or the judiciary will cease to be independent. We do not mean to be understood as asserting that courts may, as of inherent right, appoint the ministerial officers that register their rulings and decisions, or those that execute their process and judgments; what we mean is that the courts may appoint such agents or ministers as are immediately connected with the conduct of the business of the court, and act directly under the control and supervision of the judge. These agents or ministers of the court are in a sense officers, but they are not officers in the same sense that sheriffs and clerks are; they are, however, officers in a restricted sense, as are attorneys, counselors and solicitors.

§ 199. **Officers of court—Control of.**—A court has control of its officers[2] in so far as their duties relate to the business of the court and are directly therewith connected;[3] but a court can not, of its own motion, control the action of officers in the performance of independent duties prescribed by law. It may, of course, compel a proper discharge of any duty when a proper suit or action calls into exercise the power of the court, and requires a judgment or decree against the officer. Where the acts of the officer are such as the court has a right of its own

v. City of Cincinnati, 21 Ohio St. 14; State *v.* Harmon, 31 Ohio St. 250; Baker *v.* Kirk, 33 Ind. 517; Webster's Speech on the Presidential Protest, *contra*, State *v.* Hyde, 121 Ind. 20. The case of State *v.* Kennon, 7 Ohio St. 546, is founded upon a constitutional provision expressly prohibiting the legislature from exercising the appointing power.

[1] *In re* Janitor, 35 Wis. 410; State *v.* Smith, 15 Mo. App. 412; State *v.* Smith, 5 Mo. App. 427. But see State *v.* Smith, 82 Mo. 51.

[2] We are not referring to officers appointed by the court and subject to removal at the pleasure of the court, but of officers elected or appointed to offices established by law by the people or by other officers than the judge or judges, such officers, for instance, as sheriff's clerk, registrars or prothonotaries.

[3] King of Spain *v.* Oliver, 2 Wash. (U. S. C. C.) 429.

volition to control, it may deal with the officer in a summary mode, and need not issue any formal writ or process.[1]

§ 200. **Control of court-houses and appurtenances.** — As courts are invested with an element of sovereignty, and are parts of an independent and distinct department of government, they have, as of inherent right, powers of considerable extent over court-houses and buildings in which the business of the court is transacted. It is difficult, in the present state of the authorities, to accurately determine the extent of this authority. We think it safe to affirm that where it is necessary to enable the court to transact its business it may, within limits, make provision for rooms in which to hold its sessions, and may provide for their maintenance in proper repair. It seems to us, although we advance an opinion with some hesitation, that, as it is the duty of courts to administer justice, they must have some power to make provision for securing and keeping in proper condition places where the terms or sessions can be held. It can hardly be possible that courts must cease business and leave litigants utterly without relief because of the lack of a suitable place in which to hold their terms or sessions. This power can not probably go so far as to enable courts to order the construction of an entirely new, permanent and costly structure; but we think it does go far enough to enable them to make provision for procuring temporary quarters where there is a necessity for so doing.[2]

§ 201. **Allowances out of public funds.**—Courts may, in many cases, make allowances, payable out of the public treasury. They have no general authority to make such allowances, for their authority is limited and restricted. They may make allowance to pay counsel in prosecuting the pleas of the State

[1] Wright *v.* Huron County Clerk, 48 Mich. 642; Moore *v.* Muse, 47 Texas, 210.

[2] Board *v.* Thompson, 7 Ind. 265; Nash *v.* State, 7 Ind. 666; Commissioners *v.* Hall, 7 Watts (Pa.), 290. See, however, Los Angeles Co. *v.* Superior Court, 93 Cal. 380, S. C. 28 Pac. R. 1062. See, generally, Hudspeth *v.* State, 55 Ark. 323, S. C. 18 S. W. R. 183.

as well as to compensate counsel for defending those who defend *forma pauperis*.[1] Where there is a principal power, such as exists in cases of the classes to which we have referred, there is, also, the incidental authority necessary to the proper execution of the principal power. The general principle we have stated authorizes the conclusion that there are many instances in which a court may make allowances to be paid out of the public funds, but the power is necessarily limited and circumscribed, inasmuch as the general power to make appropriations of public funds resides in other departments of the government.

§ 202. **Agreements and stipulations of parties.**—Agreements and stipulations of parties made and brought to the notice of the court, as its rules require, often exert an important influence upon the procedure in a cause as well as upon the substantive rights of the parties. A stipulation can not, of course, confer jurisdiction upon a tribunal, nor can it authorize a judge to perform an official act at a time or place forbidden by law. Counsel may make agreements respecting matters of procedure and similar matters that will bind their clients.[2] As a general rule, attorneys can not sell or assign the claims of their clients, since such acts are beyond the scope of their authority.[3] Where there is time and opportunity to consult the client there is no authority to compromise a claim;[4] but where

[1] Board *v.* Wood, 35 Ind. 70; Gordon *v.* Board, 44 Ind. 475; Board *v.* Courtney, 105 Ind. 311; State *v.* Miller, 107 Ind. 39; Stout *v.* State, 90 Ind. 1; State *v.* Wallace, 41 Ind. 445; Keyes *v.* State, 122 Ind. 527; Commissioners *v.* Hall, 7 Watts (Pa.), 290.

[2] Devenbaugh *v.* Nifer, 3 Ind. App. 379, S. C. 29 N. E. R. 923; Hudson *v.* Allison, 54 Ind. 215; Thompson *v.* Pershing, 86 Ind. 303; Garrigan *v.* Dickey, 1 Ind. App. 421; *Re* Heath's Will, 83 Iowa, 215, S. C. 48 N. W. R. 1037.

[3] Lewis *v.* Blue, 110 N. Car. 420, S. C. 15 S. E. R. 196.

[4] Miller *v.* Edmonston, 8 Blackf. 291; Jones *v.* Ransom, 3 Ind. 327; Wakeman *v.* Jones, 1 Ind. 517; McCormick *v.* Walter A. Wood Co., 72 Ind. 518; Repp *v.* Wiles, 3 Ind. App. 167, S. C. 29 N. E. R. 441; Martin *v.* Capital Ins. Co. (Iowa), 52 N. W. R. 534; Willard *v.* A. Siegel Gas Co., 47 Mo. App. 1. See, generally, Watt *v.* Brookover, 35 W. Va. 323, S. C. 29 Am. St. R. 811; Holker *v.* Parker, 7 Cranch, 436; Preston *v.* Hill, 50 Cal. 43, S. C. 19 Am. R. 647; De Louis *v.* Meek, 2 G. Greene, 55, S. C. 50 Am. Dec. 491; Granger *v.* Batchelder, 54 Vt. 248, S. C. 41 Am. R. 846; Town of

there is an emergency, requiring prompt action, and the interests of the client would be sacrificed if action were delayed, the attorney may rightfully compromise the claim.[1] A stipulation that a decision in one of a series of cases shall govern others of the same series is valid and effective.[2] It is competent to agree upon the facts in a case, and such an agreement is sufficient to dispense with evidence where it covers the matters in issue.[3] Parties may make an agreement for the purposes of a trial, and where an agreement or stipulation is limited to a particular trial, it is not effective in any other. Notices, pleadings, and the like, may be dispensed with or waived by a stipulation, and so may almost any matter of procedure except such as affect the jurisdiction of the subject.

Whitehall *v.* Keller, 100 Pa. St. 105, S. C. 45 Am. R. 361.

[1] Whipple *v.* Whitman, 13 R. I. 512, S. C. 43 Am. R. 42; Granger *v.* Batchelder, 54 Vt. 248, S. C. 41 Am. R. 846; Kirk's Appeal, 87 Pa. St. 243, S. C. 30 Am. R. 357; Holker *v.* Parker, 7 Cranch, 436; Union Mutual, etc., Co. *v.* Buchanan, 100 Ind. 63, 78.

[2] Riggs *v.* Commercial, etc., Ins. Co., 125 N. Y. 7, S. C. 21 Am. St. 716; Townsend *v.* Masterton, 15 N. Y. 587.

[3] Witz *v.* Dale, 129 Ind. 120, S. C. 27 N. E. R. 498; Zellar *v.* City of Crawfordsville, 90 Ind. 262; Pennsylvania Co. *v.* Niblack, 99 Ind. 149; Citizens' Ins. Co. *v.* Harris, 108 Ind. 392, S. C. 9 N. E. R. 299; Western Union Tel. Co. *v.* Frank, 85 Ind. 480; Slessman *v.* Crozier, 80 Ind. 487.

CHAPTER V.

JUDGES AND JUDICIAL OFFICERS.

§ 203. Definition.
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223. Determination of necessity of appointing special judge.
224. Mode of appointing special judges.
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226. Objections to special judges.
227. Presumption of regularity in appointment.
228. Authority of special judges.

§ 203. **Definition.**—The terms "court" and "judge" are often used interchangeably, but the words are not synonymous. A judge is a judicial officer in the strictest sense of the term,[1] and he is an indispensable part of the court, but, in strictness, he is not the court. A judge may perform judicial acts in va-

[1] "You are to know moreover, that the judge so created is not to make any solemn entertainment, or be at any extraordinary expense upon his accession to his office and dignity, because it is no degree in law, but only an office and a branch of magistracy." —Sir John Fortescue. It is also said by Fortescue that "the judges do not sit in the King's courts above three hours in the day, that is from eight in the morning till eleven," and he also says that "the judges when they have taken their refreshment spend the rest of the day in the study of the Holy Scriptures and other innocent amusements at their pleasure; it seems rather a life of contemplation than of much action."

cation, but a court, strictly speaking, can act only in term and at authorized times and places. It is said that a judge is a public officer appointed to decide litigated questions according to law,[1] but this definition is too narrow, for a judge's duty is not confined to giving decisions, although that is the great and important part of his duty. A judge controls the business of a court or courts, orders that acts be done or not done in causes or matters pending in court, appoints and removes ministers of the court, such as master commissioners, referees, receivers and the like, and renders judgments and decrees. The term "court" means more than the term "judge" for the judge alone does not constitute the court although there can be no court without the judicial presence.[2] A statute employing the term "judge" usually means by that term the person who fills the office of judge, but the term sometimes refers to the court and not to the individual who fills the office of judge. The term "judge" sometimes signifies officers of a lower grade than that of judge, as, for instance, justices of the peace.[3]

§ 204. **Duties of a judge—Generally.**—The duties of a judge are exclusively judicial,[4] but, as we have elsewhere said, judicial duty is not confined solely to the hearing and decision of causes. Many other duties rest upon a judge, but they are all of a judicial nature, and connected in some form with the administration of justice. He may appoint ministers and officers of the court over which he presides, he may appoint receivers,

[1] Bouvier's Law Dict.

[2] There may be judicial presence although there is no officer present who is in strictness a judge. Thus, there may be a court of county commissioners, or of county supervisors, or of quarter sessions or of justices of the peace; yet there is no person in any of these tribunals that can with propriety or accuracy be denominated a judge.

[3] Regina *v.* Aberdale Canal Co., 14 Ad. & Ellis (N. S.), 854; Dimes *v.* Grand Junction Canal, 3 H. L. Cases, 759; Carrington *v.* Andrews, 12 Abb. Pr. R. 348; Baldwin *v.* McArthur, 17 Barb. 414, 423; Edwards *v.* Russell, 21 Wend. 63; Foot *v.* Morgan, 1 Hill, 654.

[4] Edmund Burke says: "A judge is not placed in that high position merely as a passive instrument of parties. He has a duty of his own independent of them, and that duty is to investigate the truth." Burke's Work (Bohn's ed.), Vol. VI, 496.

trustees and administrators, he may admit to the bar of his court counselors and attorneys, and may perform various other acts which partake of the nature of executive functions. It is true practically, but denied theoretically, that he exercises functions in their nature legislative, although he does not, in the strict sense of the term, exercise legislative powers. When he creates what Austin calls "judge made law," he acts substantially as a legislator, and yet it is an approved saying that "judicial legislation is odious."[1] A judge who does his duty does not exercise strictly legislative powers, although he may create new rules. He does not, as the legislature may do, arbitrarily establish new laws, but he does construct new rules; constructing them, however, out of materials existing in the decisions or the statutes. It is nevertheless true, as matter of fact, that much of our common law is judge made, and it is due to truth to say that it is usually the soundest and best law we have.[2] In theory, law is not originally created by judges, for they act upon established principles or statutes and by a process of reasoning extend these principles to new instances. There is, therefore, a creative process constantly going on and sometimes this process results in the establishment of essentially new rules. There is, also, a spirit of reconstruction almost constantly at work, inasmuch as old doctrines give way to new. While there is a high respect for precedent and a strong disposition to give the rule *stare decisis* full play there is no servile homage paid to precedent nor blind obedience yielded to the rule *stare decisis*. Many doctrines that a few years ago were considered as unalterably established have been

[1] "The judges are to declare the law, not to make the law."

[2] It is true, beyond controversy, that equity jurisprudence is almost entirely the creation of chancellors, and, certainly, of all legal systems "it is the fairest and wisest." Dwarris says: "Obsolete or unsuitable laws instead of being removed from the statute book, have been made to bend to modern usages and feelings. Instead of the legislature framing new provisions as occasion has required, it has been left to able judges to invade its province and arrogate to themselves the lofty privileges of correcting abuses and introducing improvements. The rules are thus left in the hearts of the judges instead of being put upon a right footing by legislative enactment." Dwarris Stat. 792.

overthrown. In many instances rules have been changed by a silent refusal to yield to precedent, in other instances earlier cases have been directly overruled. Principles of justice which are in their nature primary and fundamental remain unchanged, but their application is not infrequently changed and their scope extended or limited. It is, therefore, a mistake to suppose that the judges always tread in the dim footsteps of antiquity and that no progress is made by judicial action. It is true, of course, that great and radical changes are usually made by legislation, but it is not true that the courts make no progress.

§ 205. **Judicial duties and functions.**—Judicial duty sometimes embraces acts that if not connected with the business and affairs of the court would be purely ministerial or executive. There can be no doubt as to the power to appoint ministers of court, as master commissioners, trustees, receivers, administrators and the like, and yet, the abstract power of appointment is essentially an executive one. Whether an act ministerial or executive in its intrinsic nature is or is not a judicial one depends upon whether it is or is not connected with the business or affairs of the court. It is essential to judicial independence as well as to the proper and effective administration of justice that judges should possess powers not, in the strict sense, of a purely judicial character. It will, indeed, be found that all the great elements of government are, in a limited degree, blended in each department. Thus, a sheriff who levies upon property acts in a *quasi* judicial capacity in determining whether the property he seizes is subject to execution, but, nevertheless, he is a ministerial and not a judicial officer. So, too, the legislature in determining whether a law can be made general acts judicially, yet it is quite certain that the legislature has no part of the judicial power of the commonwealth it represents. An officer is not a judicial one in the true sense of the term merely because he performs duties of a judicial nature. If it were otherwise it would be almost impossible to conceive of an office not judicial, inas-

much as all officers, whatever their class or rank, are required to exercise functions and perform duties which in their nature are judicial.[1] On the other hand, a judicial officer does not become a ministerial or executive officer because some of the duties or acts he is required to perform are, abstractly considered, executive or ministerial. The truth is, that no official duty or function is to be considered in the abstract, but, as the logicians say, must "be dealt with in the concrete." Thus dealing with an act, duty, or function—and it is the only sensible mode in which to deal with them—there is no difficulty in holding that an act constituting a part of the machinery for the administration of justice is a judicial act no matter what may be its intrinsic or abstract nature. Whatever is part of that machinery or essential to the proper and effective discharge of the duties and functions of a judge is judicial.

§ 206. **Only judicial duties can be imposed on judges.**—The fundamental principle of separate and independent departments of government prohibits the law-making branch of government from imposing upon judges duties or functions that are not of a judicial nature. Judges can not be invested with powers that belong to some other branch of government, since to permit this would result in a complete subversion of the great principle we have mentioned. While it is sometimes difficult to clearly mark the line that separates judicial from non-judicial powers, there is no doubt as to the existence of the general doctrine stated.[2] As we have elsewhere shown, a

[1] Eastman *v.* State, 109 Ind. 278, 281; Wilkins *v.* State, 113 Ind. 514, 518; Maynes *v.* Moore, 16 Ind. 116; Pennington *v.* Streight, 54 Ind. 376; Crane *v.* Camp, 12 Conn. 463; Flournoy *v.* City of Jeffersonville, 17 Ind. 169. See, generally, Elmore *v.* Overton, 104 Ind. 548, S. C. 54 Am. R. 343; State *v.* Johnson, 105 Ind. 463, 467; Betts *v.* Dimon, 3 Conn. 107; State *v.* Doyle, 40 Wis. 175.

[2] Hayburn's Case, 2 Dallas, 409, note; United States *v.* Ferreira, 13 How. (U. S.) 40, note; Auditor *v.* Atchison, etc., Co., 6 Kan. 500; Supervisors of Elections, 114 Mass. 247; Rees *v.* City of Watertown, 19 Wall. 107; Heine *v.* Levee Commissioners, 19 Wall. 655; *Ex parte* Gans, 17 Fed. R. 471; Griffiths, *ex parte*, 118 Ind. 83; Griffin *v.* State, 119 Ind. 520; Smith *v.* Strother, 68 Cal. 194; Burgoyne *v.* Supervisors, 5 Cal. 9; People *v.* Town of Nevada, 6 Cal. 143; Hardenburgh *v.* Kidd, 10 Cal. 402; McLean County Precinct *v.* Deposit Bank, 81 Ky. 254; State *v.*

judicial duty or function is not confined to the mere duty or function of hearing and deciding cases, but extends to all matters legitimately connected with the administration of justice.

§ 207. **Duties of a judge can not be delegated.**—It is an ancient rule that judicial duties or powers can not be delegated.[1] The duties of a judge are personal, and no other person can perform them. "It is only the appointed judge who can speak the authoritative words of the law."[2] The general principle has been applied in various modes and in many cases, thus the reception of a verdict is a judicial function that can not be

Young, 29 Minn. 474; Shephard *v.* City of Wheeling, 4 S. E. R. 635. Judge Cooley thus states the rule: "Upon judges, as such, no functions can be imposed except those of a judicial nature." Principles of Constitutional Law, 53. Some of the courts have trenched upon the rule stated in the text, and, in doing so, have, as we believe, departed from sound principle. State *v.* Brown, 35 Kan. 167; *In re* Johnson, 12 Kan. 102; Young *v.* Ledrick, 14 Kan. 92; State *v.* Majors, 16 Kan. 440; Intoxicating Liquor Cases, 25 Kan. 751; Kirkpatrick *v.* State, 5 Kan. 673; Miller *v.* State, 2 Kan. 174; Rice *v.* State, 3 Kan. 141; Sherry *v.* Sampson, 11 Kan. 611; Winfield Town Co. *v.* Maris, 11 Kan. 128; McTaggart *v.* Harrison, 12 Kan. 62; Caviel v. Coleman, 72 Tex. 550; State *v.* Tolle, 71 Mo. 645. It seems to us that to hold that ministerial or executive duties may be imposed upon judges is to disregard a fundamental principle of constitutional law, for the plain meaning of the constitution is that judges shall be charged exclusively with judicial duties. The doctrine that ministerial duties may be imposed on judges leads to the *reductio ad absurdum*, for, if the power be affirmed, it must also be affirmed that any duty whatsoever may be imposed, since, if it be granted that the power exists, its exercise can not be restricted or limited. Conceding the existence of the power involves the further concession that the matter is one of legislative discretion, and, therefore, one limited only by the legislative will or pleasure. We think it clear that the question is one of power or no power, and that no such power exists.

[1] Hards *v.* Burton, 79 Ill. 504; Vandercook *v.* Williams, 106 Ind. 345; Wilkins *v.* State, 113 Ind 514; Campbell *v.* Board, 118 Ind. 119; State *v.* Noble, 118 Ind. 350. Chancellor Kent says: "The general rule is that judicial offices must be exercised in person, and that a judge can not delegate his authority to another. I do not know of any exception to this rule with us." 3 Com. (12th ed.) 457; 2 Bacon's Abridg. 620; Broom's Legal Maxims, 841.

[2] Per Ryan, C. J., in Van Slyke *v.* Trempealeau, etc., Co., 39 Wis. 390. It is not to be understood, however, that special judges may not be appointed where the constitution permits, for, as we shall presently show, special judges may be appointed, and, when duly appointed, may "speak the authoritative words of the law."

delegated.[1] But while it is true that a judge can not delegate his powers or functions, yet he may, where the law so provides, call a special judge to discharge his duties.[2]

§ 208. **De facto judges—Generally.**—It is often said that only the duly elected or appointed judge can speak the authoritative words of the law,[3] and in a general sense this is true, but yet one who takes this statement unreservedly and without qualification will fall into error. The decided weight of authority is that the acts of a *de facto* judge are valid. There is much diversity of opinion as to what is necessary to invest one exercising judicial functions with the character of a judge *de facto*, but there is substantial agreement upon the proposition that the acts of one actually exercising the functions of a judge *de facto* are not void.[4] It does not always follow, how-

[1] Britton *v.* Fox, 39 Ind. 369; McClure *v.* State, 77 Ind. 287; State *v.* Jefferson, 66 N. C. 309.

[2] This subject is fully considered in a subsequent paragraph under the title of special judges.

[3] Case of the Marshelsea, 10 Coke, 76; Winchester *v.* Ayres, 4 Greene, 104; *Ex parte*, Williams, 4 Yerger, 579; Dodson *v.* Scroggs, 47 Mo. 285; Dimes *v.* Grand Canal, etc., Co., 3 H. L. Cases, 794; North Bloomfield, etc., Co. *v.* Keyser, 58 Cal. 315; City of Kansas *v.* Knotts, 78 Mo. 356, 359; Livermore *v.* Brundage, 64 Cal. 299; Insurance Co. *v.* Price, 1 Hopk. Ch. 2; Sigourney *v.* Sibly, 21 Pick. 105; Kennedy *v.* Giles, 25 Mich. 83.

[4] Blackburn *v.* State, 3 Head. 690; Case *v.* State, 5 Ind. 1; *In re* Boyle, 9 Wis. 264; State *v.* Bloom, 17 Wis. 521; People *v.* Mellon, 40 Cal. 648; *Ex parte* Strahl, 16 Iowa, 369; Turney *v.* Dibrell, 3 Baxter, 235; People *v.* Staton, 73 N. Car. 546, S. C. 21 Am. R. 479; *Ex parte* Johnson, 15 Neb. 512, S. C. 19 N. W. R. 594; Littleton *v.* Smith, 119 Ind. 230, S. C. 21 N. E. R. 886; Walcott *v.* Wells, 21 Nev. —, S. C. 9 Lawyers' Rep. Anno. 59; Taylor *v.* Skrine, 3 Bre. 516; State *v.* Carroll, 38 Conn. 449; Norton *v.* Shelby County, 118 U. S. 425; State *v.* McMartin, 42 Minn. 30, S. C. 43 N. W. R. 572; Cromer *v.* Boinest, 27 S. Car. 436, S. C. 3 S. E. R. 849; Gallup *v.* Smith, 59 Conn. 354, S. C. 22 Atl. R. 334; Jameson *v.* Hudson, 82 Va. 279; State *v.* Lewis, 107 N. C. 967, S. C. 11 Lawyers' Rep. Anno. 105; Ball *v.* United States, 140 U. S. 118; Angell *v.* Steere, 16 R. I. 200, S. C. 14 Atl. R. 81; *In re* Burke, 76 Wis. 357, S. C. 45 N. W. R. 24; *In re* Manning, 76 Wis. 365, S. C. 45 N. W. R. 26; Baker *v.* State, 80 Wis. 416, S. C. 50 N. W. R. 518; United States *v.* Alexander, 46 Fed. R. 728; Manning *v.* Weeks, 139 U. S. 504, S. C. 11 Sup. Ct. R. 624. See, generally, Rives *v.* Petit, 4 Ark. 582; *In re* Ah Lee, 6 Sawy. (U. S. C. C.) 410; Campbell *v.* Commonwealth, 96 Pa. St. 344; Brown *v.* Lunt, 37 Me. 423; *In re* Parks, 3 Mont. 426; Fitchburg, etc., Co. *v.* Grand Junction, etc., Co., 1 Allen, 552; Petersilea *v.* Stone, 119 Mass. 467; Clark *v.*

ever, that because the acts of a judge *de facto* are not void that he is exonerated from personal liability. The acts of such an officer are upheld for the benefit of the public, and not for that of the officer, so that there may be a personal liability where there is legal wrong and injury, although the acts of the *de facto* officer may be sustained in favor of the public or third persons.[1] We are inclined to the opinion that the rule as declared and enforced by some of the courts is not sustained by principle. Our judgment is that where there is color of right, and the person assuming to act as a judge acts in good faith and in the honest belief that he is the rightful occupant of the office, he simply makes an erroneous decision and is not a mere naked usurper or intruder, and is not personally liable for the consequences of his mistake. We believe that where the claim to the office is not entirely groundless or colorless the officer who honestly decides upon his own title is not liable, inasmuch as he does no more than judicially declare his judgment upon the question. If an officer should erroneously decide against his own title he certainly would not be liable for his error, and we can see no reason for declaring a different rule where there is color of right, good faith and a mere error of judgment, although the decision is favorable to the title of the person who gives the decision.

§ 209. **What constitutes a judge de facto.**—A consideration of the question of what constitutes a judge *de facto* carries us into a field of stubborn conflict. The cases fight sturdily on both sides of the general question, and many and various shades of opinion are exhibited in the decisions. So great is the confusion that it is unsafe to say what is essential to make

Easton, 146 Mass. 43; Hamlin *v.* Kassafer, 15 Ore. 458; McCraw *v.* Williams, 33 Gratt. 510; State *v.* Gleason, 12 Fla. 190; Brown *v.* Lunt, 37 Me. 423; Pepin *v.* Lachenmeyer, 45 N.Y. 27.

[1] Grace *v.* Teague, 81 Me. 559, S. C. 18 Atl. Rep. 289; Newman *v.* Tiernan, 37 Barb. 159, 165; Courser *v.* Powers, 34 Vt. 517. The case last cited carries the doctrine to a very great length, and, with deference to the very able court which pronounced the judgment, we confess our inability to yield assent.

one who assumes to exercise judicial functions a judge *de facto*.[1] The best that can be done is to refer to some of the principal cases and extract the doctrines they declare. Some of the courts hold that although the office is created by an unconstitutional statute, yet one who enters it and exercises its functions may be, as to the public and third person, an officer *de facto*,[2] but other courts declare an essentially different doctrine.[3] It is declared by some of the courts that if the judge has been of counsel in the case his acts are void,[4] but by other courts a different doctrine is affirmed.[5] An unauthorized appointment is held by some of the courts not to constitute the appointee a judge *de*

[1] In the case of Walcott *v.* Wells, 21 Nev. ——, S. C. 9 Lawyers' Rep. Anno. 59, and State *v.* Blossom, 19 Nev. 312, the court accept as sound the following statement of the Supreme Court of Connecticut in State *v.* Carroll, 38 Conn. 449: "An officer *de facto* is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the interests of the public and third persons, where the duties of the office were exercised: *First.* Without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be. *Second.* Under color of a known and valid appointment or election, but where the officer had failed to conform to some precedent, requirement or condition, as to take an oath, give a bond or the like. *Third.* Under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise; such ineligibility, want of power or defect being unknown to the public. *Fourth.* Under color of an election or appointment by or pursuant to a public unconstitutional law, before the same is adjudged to be such." See, also, Mallett *v.* Uncle Sam, etc., Co., 1 Nev. 188; Meagher *v.* Storey County, 5 Nev. 244; State *v.* Curtis, 9 Nev. 325; Commonwealth *v.* Taber, 123 Mass. 253.

[2] Leach *v.* People, 122 Ill. 420; Creighton *v.* Piper, 14 Ind. 182, 184; Taylor *v.* Skrine, 3 Brev. 516; Smurr *v.* State, 105 Ind. 125, 133, S. C. 4 N. E. R. 445; *Ex parte* Strang, 21 Ohio St. 610; *In re* Ah Lee, 5 Fed. R. 899, 912; Case *v.* State, 5 Ind. 1; State *v.* Williams, 35 La. Ann. 742; State *v.* Douglass, 50 Mo. 593; Brown *v.* O'Connell, 36 Conn. 432; People *v.* White, 24 Wend. 520; Morris *v.* People, 3 Denio, 381; Sheehan's Cases, 122 Mass. 445, S. C. 23 Am. R. 374; Clark *v.* Commonwealth, 29 Pa. St. 129; Blackburn *v.* State, 40 Tenn. 689.

[3] Van Slyke *v.* Trempealeau, etc., 39 Wis. 390, S. C. 20 Am. R. 50; Rodman *v.* Harcourt, 4 B. Monr. 224, 230; People *v.* Albertson, 8 How. Pr. 363.

[4] Newcome *v.* Light, 58 Texas, 141, S. C. 44 Am. R. 604.

[5] Holmes *v.* Eason, 76 Tenn. 754, 760.

facto,[1] but by other courts a different doctrine is maintained.[2] There is no substantial disagreement upon the proposition that where a judge once rightfully in office holds over after the expiration of his term of office, he is, nevertheless, a judge *de facto*, and his acts are valid.[3] It has been held that where the office has been abolished, it can not have a *de facto* incumbent.[4] In opposition to the cases cited in a preceding note, it has been held that where the appointment was wholly unauthorized, there can be no judge *de facto*.[5] Some of the decisions declare that a judge disqualified by the common law may be a judge *de facto*,[6] but not if the disqualification is by positive statute, while other cases refuse to recognize any such distinction.[7] There is much conflict upon the question whether the action of a judge disqualified by interest is void, but at common law the rule is that the acts of such a judge are not void, although they may, if

[1] Gresham *v.* Ewell, 84 Va. 784, S. C. 6 S. E. R. 700; People *v.* Carter, 29 Barb. 208, 211.

[2] Littleton *v.* Smith, 119 Ind. 230, S. C. 21 N. E. R. 886; State *v.* Bloom, 17 Wis. 521; Town of Lewiston *v.* Proctor, 23 Ill. 483; Baker *v.* State, 69 Wis. 32, S. C. 33 N. W. R. 52; Baker *v.* Wambaugh, 99 Ind. 312, 316; Powell *v.* Powell, 104 Ind. 18, 29, S. C. 3 N. E. R. 639; State *v.* Murdock, 86 Ind. 124; Cocke *v.* Halsey, 16 Pet. 71; Commonwealth *v.* McCombs, 56 Pa. St. 436; Carleton *v.* People, 10 Mich. 250; Hunter *v.* Ferguson, 13 Kan. 462.

[3] Read *v.* City of Buffalo, 4 Abb. App. Dec. 22; Hamlin *v.* Kassafer, 15 Oregon, 456, S. C. 15 Pac. R. 778; Morton *v.* Lee, 28 Kan. 286; Carli *v.* Rhener, 27 Minn. 292, S. C. 7 N. W. R. 139; Stevenson *v.* Miller, 2 Litt. (Ky.) 306; State *v.* Pertsdorf, 33 La. Ann. 1411; Guthrie *v.* Guthrie, 71 Iowa, 744, S. C. 30 N. W. R. 779; Babcock *v.* Wolf, 70 Iowa, 676. A singular case is that of Coolidge *v.* Brigham, 1 Allen, 333. In that case the governor intended to appoint to office one William Barnes, who was known to him, and mailed to that William Barnes a commission, but the William Barnes the governor intended to appoint had died, another William Barnes received the commission and qualified, and the court held that he became an officer *de facto*.

[4] *In re* Hinkle, 31 Kan. 712, 715.

[5] Hyllis *v.* State, 45 Ark. 478. See Brown *v.* Fleming, 3 Ark. 284; Hoagland *v.* Creed, 81 Ill. 506; Andrews *v.* Beck, 23 Texas, 455. See Dabney *v.* Hudson, 68 Miss. 292, S. C. 8 So. R. 545.

[6] Heydenfeldt *v.* Towns, 27 Ala. 423; Frevert *v.* Swift, 19 Nev. 363, S. C. 11 Pac. R. 273; Fechheimer *v.* Washington, 77 Ind. 366; Cottle, Appellant, 5 Pick. 483; Coffin *v.* Cottle, 9 Pick. 287; Sigourney *v.* Sibley, 21 Pick. 101, S. C. 32 Am. Dec. 248; Gay *v.* Minot, 3 Cush. 352; State *v.* Castleberry, 23 Ala. 85.

[7] Floyd County *v.* Cheney, 57 Iowa, 160; Koger *v.* Franklin, 79 Ala. 505; Plowman *v.* Henderson, 59 Ala. 559.

properly and opportunely challenged, be avoided for error;[1] where, however, there is a peremptory statute disqualifying the person assuming to act as judge, the weight of authority is that his acts can not be supported as those of a judge *de facto*.[2] Other cases assert a different doctrine, and affirm that the acts of a disqualified judge are voidable, but not void.[3] Cases of the latter class hold that if no objection is made in the trial court none can be successfully made on appeal.

§ 210. **No man shall be a judge in his own cause.**—The common law rule that no man shall be a judge in his own cause[4] is the expression of a principle of natural justice, and so firmly interwoven into the governmental system of our English ancestry that it is regarded as a part of our organic

[1] Gorrill *v.* Whittier, 3 N. H. 268; McMillan *v.* Nichols, 62 Ga. 36; Rhea's Succession, 31 La. Ann. 323; Stearns *v.* Wright, 51 N. H. 600; Trawick *v.* Trawick, 67 Ala. 271; Fowler *v.* Brooks, 64 N. H. 423, S. C. 10 Am. St. R. 425; Rogers *v.* Felker, 77 Ga. 46; Beall *v.* Sinquefield, 73 Ga. 48; Dimes *v.* Grand Junction, etc., Co., 16 Eng. Law and Eq. 63. See, generally, Moses *v.* Julian, 45 N. H. 52, S. C. 84 Am. Dec. 114; Shropshire *v.* State, 12 Ark. 190; Ellsworth *v.* Moore, 5 Iowa, 486; Baldwin *v.* Calkins, 10 Wend. 167.

[2] Horton *v.* Howard, 79 Mich. 642, S. C. 19 Am. St. R. 198; Oakley *v.* Aspinwall, 3 N. Y. 547; Andrews *v.* Beck, 23 Texas, 455; Chase *v.* Weston, 75 Iowa, 159, S. C. 39 N. W. R. 246; Hall *v.* Thayer, 105 Mass. 219, S. C. 7 Am. R. 513; Templeton *v.* Giddings (Tex.), 12 S. W. R. 851; Reams *v.* Kearns, 5 Cold. 217; Converse *v.* McArthur, 17 Barb. 410; Estate of White, 37 Cal. 190; Chambers *v.* Hodges, 23 Texas, 104; People *v.* De la Guerra, 24 Cal. 73; Chicago, etc., Co. *v.* Summers, 113 Ind. 10, S. C. 3 Am. St. R. 616; Newcome *v.* Light, 58 Texas, 141, S. C. 44 Am. R. 604; Ochus *v.* Sheldon, 12 Fla. 138. See, generally, Dawson *v.* Dawson, 29 Mo. App. 521; State *v.* Sachs, 3 Wash. 691, S. C. 29 Pac. R. 446; Dawson *v.* Wells, 3 Ind. 398; Howell *v.* Budd, 91 Cal. 342, S. C. 27 Pac. R. 747; Wroe *v.* Greer, 2 Swan. 172; Crozier *v.* Goodwin, 1 Lea, 125.

[3] Hine *v.* Hussey, 45 Ala. 496; Fowler *v.* Brooks, 64 N. H. 423, S. C. 13 Atl. R. 417; Posey *v.* Eaton, 9 Lea, 500, 503; State *v.* Voorhies, 41 La. Ann. 567, S. C. 6 S. R. 826; Ellsworth *v.* Moore, 5 Iowa, 486; Stone *v.* Marion County, 78 Iowa, 14, S. C. 42 N. W. R. 570. See Phillips *v.* Eyre, 6 Q. B. 1; Eastwood *v.* Buel, 1 Ind. 434; Rogers *v.* Felker, 77 Ga. 46; Koger *v.* Franklin, 79 Ala. 505; Plowman *v.* Henderson, 59 Ala. 559.

[4] Chief Justice Coke declared that "even an act of Parliament made against natural equity, as to make a man judge in his own cause, is void in itself." Coke Litt., § 212. In this age of British history Coke's statement can hardly be accepted as correct, wise as it is, for the supremacy of Parliament is now so complete that it is almost all-powerful.

law.[1] By force of the great principle that written constitutions are deemed to be framed by men living in organized society and with reference to existing fundamental principles, the rule stated is held to form part of our American constitutions, although no written words give it expression.[2] Where a man decides upon his own rights as against opposing claims of others, there is no exercise of judicial power, since an intrinsic and irreparable attribute of that power is freedom from the influence of self-interest. Judicial power is not a legislative creation and the legislature can no more create judicial power than it can create natural justice, hence any attempt to lodge judicial power where it can not possibly exist must, in all constitutional governments, be utterly abortive.

§ 211. **Disqualification of judges by interest.**—There can be no doubt, as is evident from what we have said in the preceding paragraph, that when a judge has an actual and material interest in the suit or action he is disqualified, although there may be no positive statute declaring that interest disqualifies. The only question is as to the character or degree of interest that is sufficient to disqualify a judge from sitting in the particular case. It has been held that the interest which will disqualify a judge is a property interest in contradiction to an interest of feeling or sympathy.[3] When the term inter-

[1] Judge Cooley says: "A legislative act which should undertake to make a judge the arbiter in his own controversies would be void, because though in form a provision for the exercise of judicial power, in substance it would be the creation of an arbitrary and irresponsible authority, neither legislative, executive or judicial, and wholly unknown to constitutional government." Cooley Const. Lim. 175.

[2] *Ante*, § 155, 4 Coke's R. 118; Insurance Co. *v.* Price, 1 Hopk. Ch. 1; Sigourney *v.* Sibley, 21 Pick. 101; Kennedy *v.* Giles, 25 Mich. 84; Livermore *v.* Brundage, 64 Cal. 299; City of Kansas *v.* Knotts, 78 Mo. 356, 359; North Bloomfield, etc., *v.* Keyser, 58 Cal. 315.

[3] Sauls *v.* Freeman, 24 Fla. 209, S. C. 12 Am. St. R. 190, 4 So. R. 525. In the course of the opinion the court said: "The interest meant by the statute is property interest. In Inhabitants of Northampton *v.* Smith, 11 Met. 395, it is said that the interest must be a pecuniary or proprietary interest, a relation by which, as debtor or creditor, or heir or legatee, or otherwise, the judge will gain or lose something by the result of the proceedings, in contradistinction to an interest of feeling or sympathy or bias that would

est is employed in a statute it is safe to assume, as a general rule, that a pecuniary or property interest is meant, but this meaning may, of course, be altered by the context.

§ 212. **The degree of interest that disqualifies.**—It is, as we have said, clear that a direct substantial interest constitutes a disqualification, but it is not every interest, although of a pecuniary or property nature, that will be regarded as a disqualification.[1] A possible remote or contingent interest does not ordinarily incapacitate a judge from hearing and determining the case. As an example of a real and material interest sufficient to disqualify may be given that of a stockholder in a private corporation.[2] Examples of interest that does not disqualify will be found in the cases which hold that a judge is not disqualified by the fact that he is a tax-payer of a governmental corporation interested as a party to the litigation.[3] Where the judge's interest as stockholder in a private corporation has terminated he is not disqualified.[4] The mere fact that the

disqualify a juror. See, also, Sjoberg *v.* Nordin, 26 Minn. 501. If the nature of the suit is such that no individual property interest of the judge or juror is involved in it, there can be no disqualification of either on the ground of interest."

[1] Ellis *v.* Smith, 42 Ala. 349; Peck *v.* Essex Freeholders, Spencer (N. J.), 457; Gaines *v.* Harvin, 19 Ala. 491; Day *v.* Savadge, Hob. 87; Gains *v.* Barr, 60 Texas, 676. See Moses *v.* Julian, 45 N. H. 52, and cases on note 84 Am. Dec. 114.

[2] Gregory *v.* Cleveland, etc., Co., 4 Ohio St. 675; Stuart *v.* Mechanics', etc., Bank, 9 John. 496; Bank of North America *v.* Fitzsimons, 2 Binn. (Pa.) 454. See, generally, Limerick *v.* Murlatt, 43 Kan. 318; Patrick *v.* Crowe, 15 Colo. 543.

[3] State *v.* Severance (Me.), 2 New Eng. R. 425; *In re* Guendar, 69 Cal. 88. But see, Peck *v.* Freeholders, 21 N. J. L. 656; Commonwealth *v.* Fletcher, 157 Mass. 14, S. C. 31 N. E. R. 687. In State *v.* Craig (Me.), 13 Atl. R. 129, it was held that a magistrate is not disqualified because a moiety of the penalty sued for goes to the municipality of which he is a tax-payer. See, upon the general subject, Davis *v.* State, 44 Texas, 523; Russell *v.* Perry, 16 N. H. 100; Hancock's Will, 91 N. Y. 284; Hodde *v.* Susan, 58 Texas, 389; People *v.* Edmonds, 15 Barb. 529; McFaddin *v.* Preston, 54 Texas, 403; Trustees *v.* Bailey, 10 Fla. 213; Buckingham *v.* Davis, 9 Md. 324; Pearce *v.* Atwood, 13 Mass. 324; Hills *v.* Wells, 6 Pick. 104; Grigsby *v.* May (Texas), 19 S. W. R. 343; Succession of Jan, 43 La. Ann. 924, S. C. 10 S. R. 6.

[4] Palmer *v.* Lawrence, 5 N. Y. 389; Nicholson *v.* Showalter (Texas), 18 S. W. R. 326.

judge belongs to an organization formed for the purpose of suppressing thieving does not disqualify him from trying a person arrested for larceny.[1]

§ 213. **Collateral attacks on the right of a judge to hear and decide a case.**—It seems to us that many of the cases which hold that the judgment of a judge pronounced in a case where he is disqualified by statute may be treated as a nullity go entirely too far. We know that the doctrine we venture to condemn is asserted by able courts, but we can not believe their premises sound or their reasoning valid. We believe that principle requires that such a judgment should be subject to collateral impeachment only where the disqualification appears of record. It is now settled beyond fair debate that a collateral attack avails only in cases where the defect that makes the judgment void appears on the face of the record. If extrinsic evidence is required to prove facts establishing the invalidity of the judgment, a collateral attack will fail.[2] The doctrine we are criticising opposes the fundamental principle we have stated, inasmuch as it affirms that the facts creating the disqualification may be established by evidence *dehors* the record. The departure from the principle stated brings a long train of evils, for it destroys faith in records and judgments, unsettles adjudications and puts ministerial officers in peril. A ministerial officer ought not, in fairness and in justice, to be required to look beyond the face of the record, nor is he required to do so, as a general rule. The exception to the general rule, embodied in the doctrine we are considering, is an arbitrary one, deforming the law and breaking in upon its consistency, and it is an exception having no foundation in reason or justice. Where the disqualifying fact appears of record it is otherwise, for in such a case the record imparts full infor-

[1] People *v.* Mahoney, 18 Cal. 180.

[2] Harmon *v.* Moore, 112 Ind. 221; Newcomb *v.* Newcomb, 13 Bush. 544, S. C. 26 Am. R. 222; Stackhouse *v.* Zuntz, 36 La. Ann. 529, 533; Hughes *v.* Cummings, 7 Colo. 203, S. C. 2 Pac. R. 289; Scott *v.* Crews, 72 Mo. 261; Byram *v.* McDowell, 83 Tenn. 581; Beech *v.* Rich, 13 Vt. 595; *Ex parte* Bergman, 3 Wyo. 396, S. C. 26 Pac. R. 914; Wellborn *v.* People, 76 Ill. 516.

mation, and no prudent person need be misled or deceived. The rule we favor does not run counter to the constitutional principle that no man can be a judge in his own cause, for if the cause is in the full and true sense that of the judge, the record will so disclose. A judge may be in some degree interested, and still the cause not be his own in the strict sense. But it is held, as we have seen, by the decided weight of authority, that a judge who acts under an unconstitutional statute is an officer *de facto* and his judgments not void, so that even if the judge violates the unwritten constitutional rule forbidding a man from acting as a judge in his own cause, he is no less a judge *de facto* than one who acts under an unconstitutional statute. The salutary considerations of public policy and the sound reasons which support the rule that the judge is an officer *de facto* although he acts under an absolutely void statute, support the view that so, also, is the judge who violates the unwritten constitutional prohibition. Another reason for our view is this: Where there is a question as to whether the judge is or is not disqualified, a judicial question is presented for decision, and the decision, although erroneous, ought to prevail against a collateral assault. This conclusion is fortified by analogous cases, and rests on general principles of unquestionable soundness. It is supported by the cases which hold that when a court determines that facts essential to its jurisdiction exist, its judgment can not be collaterally impeached, and so it is by the cases which adjudge that the decision of a court upon its own organization can only be annulled by a direct attack.

§ 214. **Questioning, on appeal, the right of a judge to act.**— It is consistent with principle and in harmony with the doctrine of the adjudged cases to affirm that the right of a judge to hear and determine a particular cause may be questioned on appeal, provided the proper objection is made in the court of original jurisdiction, and provided the title of the officer is not brought into question. There is an essential difference between cases where the question is whether there is a disqualify-

ing interest and cases where the question is as to the legality or regularity of the election or appointment of the judge. The title to the office where there is color of title can not be tried, even on a direct appeal; but the question whether the judge has correctly or erroneously decided the question of his qualification to try the particular case may be determined on appeal. Where the title to the office is brought in question, all cases and all parties in the court are affected, and so, also, is the public; but where the question is one of qualification to try a particular case, only the parties to that case are affected. In the one class of cases the right involved is a general one, whereas in the other class only particular persons are interested, and no public or general rights are involved. So, too, where it is sought to question the title of the judge, his right to the office is assailed; but where the objection is as to his qualification to sit in a particular case, nothing more is done than to challenge his right to act in that one case. His official character is not put in issue. All that is done is to question his right to act in a specific matter, so that his right to the office is not only not challenged, but conceded. The effect of the objection is to concede that he is rightfully in office, but that for reasons peculiar to the particular case he is not qualified to exercise the powers and functions of his office.

§ 215. **Attack by appeal not collateral.**—The qualification of a judge to sit in a particular case is a matter for his decision in that case, and hence his decision on the question is a ruling in the case. As it is a ruling in the case, it is reviewable on appeal or writ of error. In presenting the ruling for review, no collateral attack is made upon the title to the office of the judge. No such question can arise, for, as we have seen, the objection to his qualification to sit in the particular case impliedly and necessarily affirms that he is the judge *de jure*. One who objects upon a specific ground concedes that no other grounds of objection exist.

§ 216. **Disqualification because of relationship.**—At com-

mon law relationship was not, of itself, a disqualification, but it is generally made a cause of disqualification by statute.[1] The degree of kinship or relationship which will disqualify is so much a matter of statutory regulation that no general rule can be stated. We refer to the decided cases upon the subject without comment.[2]

§ 217. **Various statutory disqualifications.**—Many of the State statutes prohibit one who has been of counsel from sitting as judge, and where such statutes exist the objection, seasonably made, properly presented on appeal and well founded, is fatal to the right of the judge to proceed in the case.[3] In other States the statutes provide that bias or prejudice shall constitute a disqualification.[4] But the statutes, while in sub-

[1] Commonwealth *v.* Reed, 1 Gray, 472; Commonwealth *v.* Ryan, 5 Mass. 90. But see Ames *v.* The Port Huron, etc., Co., 11 Mich. 149; State *v.* Crane, 36 N. J. L. 394; Lanfear *v.* Mayor, 4 La. 97, S. C. 23 Am. Dec. 477; Place *v.* Manufacturing, etc., Co., 28 Barb. 503; Pierce *v.* Sheldon, 13 Johns. 491.

[2] Fowler *v.* Byers, 16 Ark. 196; Underhill *v.* Dennis, 9 Paige, 202; Aldrich Appellant, 110 Mass. 189; Edwards *v.* Russell, 21 Wend. 64; Foot *v.* Morgan, 1 Hill, 654; Reed *v.* Newcomb, 62 Vt. 75, 19 Atl. R. 367; *In re* Marston, 79 Me. 25, 3 N. E. 601; Guerra *v.* Burton, 23 Cal. 592; Sanborn *v.* Fellows, 22 N. H. 473; Lines *v.* Darden, 6 Fla. 37; Winchester *v.* Hinsdale, 12 Conn. 88; Bayard *v.* McLane, 3 Harr. (Del.) 139; Higbe *v.* Leonard, 1 Denio, 186; Schultze *v.* McLeary, 73 Texas, 92, S. C. 11 S. W. R. 924; Horton *v.* Howard, 79 Mich. 642, 44 N. W. R. 1112; Patrick *v.* Crowe, 15 Colo. 543, S. C. 25 Pac. R. 985; Salm *v.* State, 89 Ala. 56, S. C. 8 S. R. 66.

[3] Littrell *v.* Wilcox, 11 Mont. 77, S. C. 27 Pac. R. 394; Tampa, etc., *v.* Tampa Co. (Fla.), 17 Law. R. Anno. 681; Owings *v.* Gibson, 2 A. K. Marsh (Ky.), 517; Bryan *v.* Austin, 10 La. Ann. 612; Denn *v.* Tatem, 1 N. J. L. 164; State *v.* Collins, 5 Wis. 339; Jewett *v.* Miller, 12 Iowa, 85; Nugent *v.* Stark, 34 La. 628; Slaven *v.* Wheeler, 58 Tex. 23; Carrington *v.* Andrews, 12 Abb. Pr. 348; Chambers *v.* Hodges, 23 Texas, 104; Curtis *v.* Wilcox, 74 Mich. 69, 41 N. W. R. 863; East Rome Town *v.* Cothran, 81 Ga. 359; Darling *v.* Pierce, 15 Hun, 543; Deadrick *v.* Watkins, 8 Hump. (Tenn.) 520; Reams *v.* Kearns, 5 Cold. (Tenn.), 217. See, generally, King *v.* Sapp, 66 Tex. 519, S. C. 2 S. W. R. 573; Wilks *v.* State, 27 Texas App. 381, S. C. 11 S. W. R. 415; Hobbs *v.* Campbell, 79 Texas, 360, S. C. 15 S. W. R. 282; State *v.* Burks, 82 Texas, 584, S. C. 18 S. W. R. 662; Woodfolk *v.* State, 85 Ga. 69, S. C. 11 S. E. R. 814; Carr *v.* Fife, 44 Fed. R. 713.

[4] Barnes *v.* McMullins, 78 Mo. 260; Turner *v.* Commonwealth, 2 Metcf. (Ky.) 619; State *v.* Shipman, 93 Mo. 147, S. C. 6 S. W. R. 97; State *v.* Chapman (S. Dak.), 47 N. W. R. 411; State *v.* Rodway (S. Dak.), 47 N. W. R.

stance very similar, differ so much in detail and phraseology that we shall not attempt to consider the subject at length. It may be said generally that the fact that a judge has presided at a former trial, or has, in the course of the proceedings, expressed an opinion, does not authorize the conclusion that bias or prejudice exists in his mind.[1]

§ 218. **Necessity may compel disqualified judge to act.**—In accordance with the principle which rules in many departments of jurisprudence, necessity may compel a disqualified judge to hear and decide a cause. All rules, statutory or common law, yield to necessity. Where no other judge can be obtained, the disqualified judge must act, no matter how unpleasant the duty may be.[2]

§ 219. **Change of judge.**—Where the statute so provides, it is the imperative duty of a judge to call in another judge, provided the objections to his competency are properly and opportunely made. In some of the States the specific facts constituting the objections must be stated; in others, it is sufficient to state the ground of objection in the general language of the statute. It is enough for our present purpose to say that the statutory requirements must be substantially complied with, as we have elsewhere considered this phase of the subject.[3]

§ 220. **Power to appoint special judges—Generally.**—The rule that judicial power can not be delegated is not violated by the appointment of a special judge, for in such a case there is no delegation of authority. The special judge is substituted for the regular judge, and for the occasion or case occupies the position of a judge in all that the term implies.[4] There can,

1061; McCauley *v.* Weller, 12 Cal. 500; Russell *v.* Russell (Ky.), 12 S. W. R. 709; Cooper *v.* Brewster, 1 Minn. 94; People *v.* Williams, 24 Cal. 31.

[1] Pearson *v.* Hopkins, 2 N. J. L. 194; Fry *v.* Bennett, 28 N. Y. 324; McDowell *v.* Van Deusen, 12 Johns. 356; Bank of North America *v.* Fitzsimons, 2 Binn. (Pa.) 454.

[2] Thellusson *v.* Rendlesham, 7 H. L. Cases, 429; Commonwealth *v.* Ryan, 5 Mass. 90; Matter of Ryers, 72 N. Y. 1, S. C. 28 Am. R. 88. See, generally, Bessett *v.* Governor, 11 Ga. 207; Commonwealth *v.* Brown, 147 Mass. 585, S. C. 9 Am. St. R. 736.

[3] *Post*, Change of Venue.

[4] Bush *v.* Lisle, 86 Ky. 504, S. C. 6 S. W. R. 330; State *v.* Sneed (Mo.), 4 S. W. R. 888.

however, be no special judge effectively appointed unless authorized by a valid statute. A judge has no inherent power to appoint a substitute, but he may be authorized to do so by constitutional legislation. A special judge is one who takes the place of the regular judge under a temporary appointment, and it is necessary to give validity to his acts, as against an attack seasonably and appropriately made, that he should be appointed in the mode prescribed by law, but if there is power to appoint, the acts of a special judge can not, it is well agreed, be successfully questioned by a collateral attack.[1] Where there is an absolute lack of power to appoint a special or substitute judge, that is, where there is no law authorizing, or assuming to authorize,[2] the appointment of such a judge, there is reason for holding void the proceedings conducted by him.[3] In such a case the record affirmatively shows (if it is made to speak the truth) that the person who assumed to act as judge was a mere usurper or a naked intruder, so that it carries on its face evidence of its own invalidity. The question, in such a case, is really one of power or no power, and it is to be determined

[1] Hunter *v.* Ferguson, 13 Kan. 462, 465; Guilbeau *v.* Cormier, 32 La. Ann. 930; State *v.* Murdock, 86 Ind. 124; Adams *v.* Gowan, 89 Ind. 358; Cargar *v.* Fee, 119 Ind. 536. See *ante*, §§ 208, 213. See, also, upon the general subject, Alabama, etc., Co. *v.* Burkett, 42 Ala. 83; Holly *v.* Carson, 39 Ala. 345; State *v.* Lewis, 107 N. C. 967, S. C. 12 S. E. R. 457; Grinstead *v.* Buckley, 32 Miss. 148; Henderson *v.* Pope, 39 Ga. 361; People *v.* Petty, 32 Hun, 443; State *v.* Williams, 14 W. Va. 851; Bear *v.* Cohen, 65 N. C. 511; Clark *v.* Rugg, 20 Fla. 861; People *v.* Gallagher, 75 Mich. 512; Williams *v.* Benet, 35 S. C. 150, S. C. 14 Lawy. Rep. Anno. 825, 14 S. E. R. 311; Granite Mountain, etc., Co. *v.* Durfee, 11 Mont. 222, S. C. 27 Pac. R. 919.

[2] We use the term "assuming to authorize" because we incline to the opinion that although the act of the legislature may be unconstitutional, still there may be a judge *de facto*, and if there is such a judge the proceedings are not void but, at most, are only voidable. Thus, for example, if the legislature should attempt to authorize the appointment of special judges, and the act should be void because of some defect in its title, one who acted as special judge pursuant to an appointment under the unconstitutional statute would be a judge *de facto*.

[3] Hoagland *v.* Creed, 81 Ill. 506; State *v.* Fritz, 27 La. Ann. 689. See Baisley *v.* Baisley, 15 Ore. 183, S. C. 13 Pac. R. 888; Winchester *v.* Ayres, 4 Greene (Iowa), 104; Brown *v.* Buzan, 24 Ind. 194; Harper *v.* Jacobs, 51 Mo. 296; Smith *v.* Haworth, 53 Mo. 88; *Ex parte* Amos, 51 Ala. 57.

upon the law and the record without resort to extrinsic evidence. No principle is violated in holding that the acts of one who assumes to be a special judge may be collaterally impeached, where, as matter of law, it is impossible that there can be a special or substitute judge, for, if it is impossible that there can be such a judicial officer there can be no court. But where there is a law assuming to grant power to create or appoint special judges, it can not be said that it is impossible that a person exercising the functions of special judge may not be acting rightfully and lawfully, and, as the presumption is in favor of the validity and rightfulness of his acts,[1] a collateral assault upon them must be unavailing.

§ 221. **Special judges.**—As indicated in the preceding section, a special judge is one who, for the time, takes the place of the regularly appointed or elected judge, and, while acting under the appointment, is a judge with all the powers of the regular judge.[2] A special judge does not fill a vacancy in the office of judge, nor is he a judge except for the time and occasion embraced in his appointment.[3] A special judge may be appointed to hold special, adjourned, or even general, terms of court, or he may be called in to try a special case or particular cases. A special judge may, where the statute so provides, be appointed by the regular judge upon his own volition, but the appointment is usually made upon the application of a party to the suit or action. To give full effectiveness and force to the appointment of a special judge the provisions of the law should be substantially followed. Where a statute enacted

[1] *Post*, § 227.

[2] *Post*, § 228.

[3] It necessarily follows that a special judge is not a duplicate judge; he is a temporary officer, occupying the place of the permanent judge. Where a special judge is called, the regular judge can not act with him, for the whole theory of the appointment of special judges is that of substitution. For the time and the occasion the regular judge goes out when the special judge comes in. Some of the cases press this general doctrine very far. State, *ex rel.*, *v.* Beattie, 38 La. Ann. 452; Cox *v.* State, 30 Kan. 202; *In re* Millington, 24 Kan. 214; Tarpenning *v.* Cannon, 28 Kan. 665; Haverly, etc., Co. *v.* Howcutt, 6 Colo. 574; Clark *v.* Rugg, 20 Fla. 861; Bear *v.* Cohen, 65 N. C. 511.

under constitutional warrant provides for the appointment of a special judge, or judge *pro tempore*, such an appointment is valid, and irregularities in the appointment do not render such appointment void, although if objections are seasonably interposed, such irregularities may, if material, constitute such error as would require a reversal upon appeal.[1] The courts, however, generally incline to the doctrine that even upon a direct attack irregularities will be disregarded unless they are of a material and influential character,[2] and it is generally held that objections must be promptly interposed or they will be deemed waived.[3] Where, however, there is no constitutional authority to enact statutes providing for the appointment of special judges, there can, as we have said, be no court held by one who assumes the functions of a special judge, since there can be no color or claim of right to the office.[4] We think there is a difference between an entire lack of legislative authority and an ineffective effort to exercise authority. We believe that the acts of a special judge would not be void if there was general legislative authority to enact the statute, although the statute might be invalid because of a violation of some provis-

[1] Holden *v.* Haserodt (S. D.), S. C. 49 N.W. R. 97; Munzesheimer *v.* Fairbanks, 82 Tex. 351, S. C. 18 S. W. R. 697.

[2] State *v.* Sachs, 3 Wash. 496, S. C. 29 Pac. R. 446; State *v.* Gamble, 108 Mo. 500, S. C. 18 S. W. R. 1111; State *v.* Gilmore, 110 Mo. 1, S. C. 19 S. W. R. 218. See, generally, Haley *v.* Jump River, etc., Co., 81 Wis. 412, S. C. 51 N.W. R. 321; State *v.* Sanders, 106 Mo. 188, S. C. 17 S. W. R. 223.

[3] Lillie *v.* Trentman, 130 Ind. 16, S. C. 29 N. E. R. 405.

[4] It is held in some of the cases that where there is no right to appoint, consent of parties will not validate the acts of the person who assumes to exercise the functions of a special judge. Haverly Mining Co. *v.* Howcutt, 6 Colo. 574; Wright *v.* Boon, 2 Greene (Iowa), 458; Hyllis *v.* State, 45 Ark. 478; Herbster *v.* State, 80 Ind. 484; McClure *v.* State, 77 Ind. 287; Cobb *v.* People, 84 Ill. 511; Bishop *v.* Nelson, 83 Ill. 601. But see Kennedy *v.* Commonwealth, 78 Ky. 447; Smith *v.* Trisbie, 7 Iowa, 486. Some of the cases cited, as we believe, go much beyond the true line, for they affirm that an irregular or defective exercise of the power to appoint renders the appointment void. This, we venture to say, is a radical error, for, if the general power of appointment exists, error in the mode of exercising it may render the appointment voidable, but it does not make it a nullity. The acts of a special judge, where there is general power to appoint, must, on principle, be secure against a collateral attack.

ion regarding the enactment of laws, as, for instance, a violation of the provision inhibiting the enactment of special laws. We have no doubt that the acts of a special judge who assumed to act under an unconstitutional statute would be voidable, and, because voidable, set aside on appeal; but we do not believe they would be absolutely void. It seems to us that some of the courts have not been mindful of the difference between void and voidable acts, and have fallen into error.

§ 222. **Who appoints judges pro tempore.**—The general practice is for the regularly elected judge to make the appointment of the special judge, but some of the State statutes make different provisions, and, of course, such provisions are of controlling force. Where the regular judge is disqualified he may, although objection is made because of his disqualification, select the judge *pro tempore*. Where there is no constitution or statutory provision to the contrary, the regular judge is the proper person to name the special judge, and enter such orders as are necessary to procure his attendance.[1]

§ 223. **Determination of the necessity for appointing special judge.**—The statutes of many of the States provide that when a judge is unable because of illness or the like to hold court, he may call in a special judge, and some of them provide that in case the judge is incapacitated or disqualified he may appoint a special judge to try a particular case or cases. It is clear that in all such jurisdictions a comprehensive discretion is conferred upon the judge; and his decision in appointing a substitute is not subject to review.[2] The statutes to which we refer are those which leave the matter to the judge himself and require no application from the parties. Where the law gives the party a right to a change upon prescribed terms, quite a

[1] Granite, etc., Co. *v.* Durfee, 11 Mont. 222, S. C. 27 Pac. R. 919.

[2] State *v.* Gilmore, 110 Mo. 1, S. C. 19 S.W. R. 218; State *v.* Murdock, 86 Ind. 124, 128; Fassinow *v.* State, 89 Ind. 235. See, generally, Zonker *v.* Cowan, 84 Ind. 395; Firgel *v.* State, 85 Ind. 580; State *v.* Judge, 38 La. Ann. 452; Schultze *v.* McLeary, 73 Texas, 92, S. C. 11 S. W. R. 924; Walters *v.* Walters, 117 Ind. 247.

different question is presented, for a compliance with the statute makes it the imperative duty of the judge to grant the change.[1] If the power to order a change is entirely discretionary, there is no reason why the causes which influenced the judge in ordering the change should appear of record.[2] We know that in some of the cases a different doctrine is declared,[3] but we are persuaded that these cases are not well decided. As the matter is one of discretion there can be no review or revision, so that there can not be said to be material error, and if there can be no error, there is no reason why the record should show upon what grounds the judge acted in calling in a substitute. The presumption is that all acts are lawfully and regularly done,[4] and this familiar doctrine requires it to be held that sufficient reasons existed for appointing a special judge.

§ 224. **Mode of appointing special judges.**—It is not necessary to do more than say that where the law prescribes the mode in which special judges shall be appointed the law must be obeyed or the appointment will not stand against a direct attack properly and opportunely made.[5] We have already spoken of the difference between cases where the question is as to the existence of the power to appoint and cases where the question is as to the mode of exercising that power, and we shall not go over that ground again but content ourselves with a bare reference to the difference between the two classes of

[1] State *v.* Bacon, 107 Mo. 627, S. C. 18 S.W. R. 19; Hamilton *v.* Territory, 1 Wyo. Ter. 131; Shoemaker *v.* Smith, 74 Ind. 71; Burkett *v.* Holman, 104 Ind. 6; Krutz *v.* Griffith, 68 Ind. 444; Heshion *v.* Pressley, 80 Ind. 490; Corpenny *v.* City of Sedalia, 57 Mo. 88; Barnes *v.* McMullins, 78 Mo. 260. In order to make the duty to call in a special judge imperative the statute must be obeyed with reasonable exactness. German Ins. Co. *v.* Landram, 88 Ky. 433, S. C. 11 S.W. R. 367; State *v.* Chantlain, 42 La. Ann. 718, S. C. 7 So. R. 669.

[2] Leonard *v.* Blair, 59 Ind. 510; Rogers *v.* Beauchamp, 102 Ind. 33.

[3] Roberts *v.* State, 27 Fla. 244, S. C. 9 So. R. 246.

[4] *Post*, § 227.

[5] State *v.* Phillips, 27 La. Ann. 663; State *v.* Frank, 27 La. Ann. 689; State *v.* Judge, 9 La. Ann. 62; Hayes *v.* Hayes, 8 La. Ann. 468; Peter *v.* State, 6 How. (Miss.), 326. See, generally, Texas, etc., Co. *v.* Douglass, 69 Texas, 694, S. C. 7 S. W. R. 77; Nichols, etc., Co. *v.* Metzger, 43 Mo. App. 607; State *v.* Beattie, 38 La. Ann. 452; Drawdy *v.* Littlefield, 75 Ga. 215.

cases. While it is true, as we have said, that the law respecting the mode of appointing special judges must be obeyed, it is, nevertheless, sufficient if there is a substantial compliance with the requirements of the law. Some of the courts declare a very rigid and technical doctrine, but the weight of modern authority and the influence of reason is against that doctrine. There is no valid reason for allowing a departure from the statute to overthrow the judgment where the departure is not important or does not prejudice the substantial rights of the complaining party. It is now generally held that a harmless error, no matter what may be its character in other respects, will not avail to reverse a judgment, and there is no reason why this general doctrine should not apply to the appointment of a special judge. The courts have, as a general rule, given a very liberal construction to the power conferred upon legislatures to provide for the appointment of special judges, and have almost gone to the extent of holding that the legislature may make any provision it chooses respecting the mode of appointing judges.[1]

§ 225. **Procedure respecting appointment of special judges.** —The form of the application and the facts which must be stated in order to entitle a party to compel a change of judges are so much a matter of statutory regulation that we shall not attempt to give in detail rules upon the subject. It may, however, be said, in general terms, that it is necessary to make such an application as the statute requires and file it within the time prescribed by the statute or the rules of the court. Where the court on its own motion directs a change of judge, the record, in order to be strictly accurate, should show affirmatively the reasons which influenced the court in ordering the change, but we do not regard a failure to show such reasons as fatal to the change. Some of the cases hold that the record must affirmatively show the reasons for the change or the order

[1] Smith *v.* Blakeman, 8 Bush (Ky.), 476; Ligan *v.* State, 3 Heisk. (Tenn.), 159; State *v.* Williams, 14 W.Va. 851; Kennedy *v.* Commonwealth, 78 Ky. 447; Rudd *v.* Woolfolk, 4 Bush (Ky.), 555.

directing it will be deemed erroneous,[1] but this doctrine we believe to be contrary to principle and opposed to rules declared and enforced again and again in analogous cases. We regard the cases which hold a liberal doctrine as the safer and sounder precedents.[2] It is held by some of the courts that the special judge must have a written certificate of his appointment,[3] and there is reason for this rule, but we think that where the parties appear without interposing any objection, and the special judge tries the case, the failure to appoint in writing does not invalidate the proceedings. The better doctrine is that all irregularities not going to the merits are disregarded, but where they affect the merits they are available on appeal when proper objections are interposed.[4]

§ 226. **Objections to special judges.**—Where the record proper does not show the objections to a special judge, the rules of practice require that the objections should be specific and be put in writing.[5] The slovenly and unsafe practice of making

[1] In many of the cases a very strict rule is declared and adhered to; much stricter, in our judgment, than the law authorizes. Thompson *v.* State, 9 Tex. App. 301; Worsham *v.* Murchison, 66 Ga. 715; *In re* Lynch, 9 Abb. N. Cases, 69; *In re* Application of Judges, 64 Pa. St. 33; Rudd *v.* Woolfolk, 4 Bush (Ky.), 555. See, generally, Slone *v.* Slone, 2 Met. (Ky.), 339.

[2] Wyers *v.* State, 21 Texas App. 448; Hughes *v.* Commonwealth, 89 Ky. 227, S. C. 12 S.W. R. 269; State *v.* Gamble, 108 Mo. 500, S. C. 18 S. W. R. 1111; Wood *v.* Franklin, 97 Ind. 117. See, generally, Taylor *v.* Bosworth, 1 Ind. App. 54; Board *v.* Courtney, 105 Ind. 311; Rubush *v.* State, 112 Ind. 107; Powell *v.* Powell, 104 Ind. 18, 29; Vandever *v.* Vandever, 3 Met. (Ky.), 187; Salter *v.* Salter, 6 Bush (Ky.), 624; Evans *v.* State, 56 Ind. 459; Fawcett *v.* State, 71 Ind. 590.

[3] Kennedy *v.* State, 53 Ind. 542, 544; Thompson *v.* State, 9 Texas App. 301. See authorities cited. Elliott's Appellate Procedure, §§ 770, 782.

[4] Denning *v.* Norris, 2 Lev. 243; Andrews *v.* Linton, 2 Ld. Raymond, 884; Weeks *v.* Ellis, 2 Barb. 320; Grant *v.* Holmes, 75 Mo. 109; Caskey *v.* City of Greensburgh, 78 Ind. 233; Pepie *v.* Lachenmeyer, 45 N. Y. 27.

[5] Where the record does not show, or is not made to show, the specific objections to a special judge, no question is presented for consideration on appeal. Good practice requires that objections should be specific since this is necessary to fully inform the trial court of the nature of the questions presented and also to prevent parties from presenting one question in the court of original jurisdiction and another question on appeal. Where the case is one in which there is an absolute absence of power to appoint a special judge, the question of his com-

objections orally is not one to be encouraged in any part of a judicial proceeding, except in the course of the trial, where necessity excuses, and is certainly not allowable where objections are made to one who occupies the position of a judge. Objections to the competency of a special judge should be promptly made. If not made with reasonable promptness they are regarded as waived.[1] The rules we have just stated are sustained by the well considered cases, but there are cases, which seem to us not well decided, which declare a different doctrine. The principle that objections not made at the earliest practicable opportunity are deemed waived is recognized almost everywhere throughout the law, and we can see no reason for denying its application to such matters as the appointment and qualification of special judges, but, on the contrary, there appears to us to be stronger reasons for applying the principle to such matters than there is for applying it to matters of ordinary procedure. The true rule is to require objections to be made before entering upon the trial.[2] If the objections are not then known and could not have been discovered by the exercise of reasonable care and diligence the party may, upon a proper showing, be excused for delaying his objections; but where no cause for delay is shown principle requires it to be

petency may be made at any time, since, as we have elsewhere shown, the question is one of law purely.

[1] Stearns *v.* Wright, 51 N. H. 600; Peebles *v.* Rand, 43 N. H. 337; Moses *v.* Julian, 45 N. H. 52; State *v.* Whitney, 7 Ore. 386; State *v.* Voorhies, 41 La. Ann. 567, S. C. 6 So. R. 826; Bowen *v.* Swander, 121 Ind. 164; Hayes *v.* Sykes, 120 Ind. 180; Smurr *v.* State, 105 Ind. 125; Schlungger *v.* State, 113 Ind. 295; Greenwood *v.* State, 116 Ind. 485, S. C. 19 N. E. R. 333; State *v.* Sachs, 3 Wash. 691, S. C. 29 Pac. R. 446; Miller *v.* Burger, 2 Ind. 337; Grant *v.* Holmes, 75 Mo. 109; Harper *v.* Jacobs, 51 Mo. 296. See, generally, Kentucky, etc., *v.* Kenney, 82 Ky. 154; Tucker *v.* Allen, 47 Mo. 488. In the case of Radford, etc., Co. *v.* East Tennessee, etc., Co. (Tenn.), 21 S.W. R. 329, the court holds that where a person acts as judge by consent of parties, his decision is not void because he did not act in the capacity of a judge. This we think is a ruling of doubtful soundness. If a person is called in as a special judge he acts as a judge and not as an arbitrator. His judgments are those of a court from which writs of error will lie or appeals may be prosecuted.

[2] Dolan *v.* Church, 1 Wyo. 187; State *v.* Greenwade, 72 Mo. 298.

held that delay until after the trial begins is a complete and effective waiver.

§ 227. **Presumption of regularity in appointment.**—The general rule is that all reasonable presumptions will be made in favor of the regularity of the proceedings of courts of general jurisdiction.[1] There is sound reason for this rule. The general doctrine is that all official acts are presumed to be rightfully performed, and the force of this doctrine is intensified when applied to judges, for they are chosen because of their learning and fitness, they hear argument, are assisted by counsel, act impartially and after due deliberation. It is, therefore, safe to affirm, notwithstanding the intimations in some of the cases to the contrary,[2] that where there is a general power to appoint special judges, the presumption is that the appointment is valid and the appointee competent.[3] Any other conclusion would require it to be affirmed that the judge who calls

[1] In the case of Tracey *v.* Altmyer, 46 N. Y. 598, the court stated the rule in these words: "It is incumbent upon a party seeking the reversal of a judgment or order to show that an error was committed to his prejudice. It is not sufficient to show that it may have been committed. The latter will not overcome the presumption that all things have been transacted correctly, until the contrary appears." This is, perhaps, a stronger statement of the general doctrine than the cases warrant, but it is not, at all events, much too strong, for the decisions go to great lengths. Bishop *v.* Village of Goshen, 120 N. Y. 337, S. C. 24 N. E. R. 720; Walters *v.* Tefft, 57 Mich. 329, S. C. 24 N.W. R. 117; Sidney, etc., *v.* Warsaw School District, 130 Pa. St. 76, S. C. 18 Atl. R. 604; Morisey *v.* Swinson, 104 N. C. 555, S. C. 10 S. E. R. 754; Kennedy *v.* McNichols, 29 Mo. App. 11; Pool *v.* Gramling, 88 Ga. 653, S. C. 16 S. E. R. 52.

[2] Worsham *v.* Murchison, 66 Ga. 715; *In re* Application of Judges, 64 Pa. St. 33; Brown *v.* Buzan, 24 Ind. 194.

[3] Harper *v.* Jacobs, 51 Mo. 296; Hess *v.* Dean, 66 Texas, 663; Henning *v.* State, 106 Ind. 386, S. C. 55 Am. R. 756; People *v.* Woodside, 72 Ill. 407; Empire, etc., Co. *v.* Engley, 14 Colo. 289, S. C. 23 Pac. R. 452; Reed *v.* Bagley, 24 Neb. 332; State *v.* Hosmer, 85 Mo. 553; Wood *v.* Franklin, 97 Ind. 117; Bates *v.* Sabin (Vt.), 24 Atl. R. 1013; Bowen *v.* Swander, 121 Ind. 164; Cargar *v.* Fee, 119 Ind. 536; Fassinow *v.* State, 89 Ind. 235; Hutts *v.* Hutts, 51 Ind. 581, 584. See, generally, Bowen *v.* Preston, 48 Ind. 367; Myers *v.* Mitchell (S. Dak.), 46 N. W. R. 245; Indiana, etc., Co. *v.* Bird, 116 Ind. 217, S. C. 18 N. E. R. 837; McCray *v.* Humes, 116 Ind. 103, S. C. 18 N. E. R. 500; Cass *v.* Krimbill, 39 Ind. 357; Hanes *v.* Worthington, 14 Ind. 320

in a special judge, as well as the person who acts as special judge, violated the law, and this would be unreasonable. The reasonable presumption is that there is neither error nor irregularity in the appointment nor lack of fitness in the person appointed, and this being true, the assailant who challenges the validity of the appointment or the competency of the person chosen must overthrow this presumption by an affirmative showing, containing matters of weight and importance, for only matters of weight and importance are entitled to consideration. The presumption should prevail unless satisfactorily overthrown by matters of record, since to hold otherwise is to assume that the person who acted as special judge was an intruder or usurper, and this can never be assumed without doing violence to settled principles, unless the facts authorizing the assumption are clearly exhibited by the record. The better considered cases adjudge that where there is a general power to appoint special judges, neither the regularity of the appointment nor the competency of the appointee can be successfully assailed in a collateral proceeding.[1]

§ 228. **Authority of special judges.**—The necessary conclusion from the principle that a special judge is for the time and

[1] Higby *v.* Ayres, 14 Kan. 331; Landon *v.* Comet, 62 Mich. 80, S. C. 28 N. W. R. 788; Myers *v.* State, 92 Ind. 390, 396; Holmes *v.* Eason, 76 Tenn. 754, 760; Griffin's Case, Chase's Dec., 361; Matter of Griffin, 25 Texas (Supplement), 623; State *v.* Choute, 11 Ohio, 511; Littleton *v.* Smith, 119 Ind. 230, S. C. 21 N. E. R. 886; State *v.* Miller (Mo.), 20 S. W. R. 243. See, generally, Warren *v.* Glynn, 37 N. H. 340; Fancher *v.* Stearns, 61 Vt. 616, S. C. 18 Atl. R. 455; Blackburn *v.* State, 3 Head. 689; Keeler *v.* Stead, 56 Conn. 501; Gallup *v.* Smith, 59 Conn. 354, S. C. 12 L. R. Anno. 353, 22 Atl. R. 334; *In re* Manning, 139 U. S. 504; *In re* Manning (Wis.), 45 N. W. R. 26; *In re* Burke, 76 Wis. 357; Dukes *v.* Rowley, 24 Ill. 210; Campbell *v.* Commonwealth, 96 Pa. St. 344; Rex *v.* Carlile, 4 C. & P. 415. But see, as holding a somewhat different doctrine, Tampa St. Ry. Co. *v.* Tampa, etc., Co. (Fla.), 11 So. R. 562; Abram *v.* State, 31 Tex. Cr. App. 449, 20 S. W. R. 987; United States *v.* Alexander, 46 Fed. R. 728; Hynds *v.* Imboden, 5 Ark. 385; Ferguson *v.* Crittenden County, 6 Ark. 479; Fitzhugh *v.* Custer, 4 Texas, 391, S. C. 51 Am. Dec. 728, 734; Blackmore *v.* Bank of the State, 3 Ark. 309; Stone *v.* Carter, 13 Gray, 575; Spradling *v.* State, 17 Ala. 440; Morgan *v.* Hammett, 23 Wis. 30, 40; Clark *v.* Lamb, 2 Allen, 396; Fenelon *v.* Butts, 49 Wis. 342, S. C. 5 N. W. R. 784.

occasion for which he is appointed invested with all the powers and functions of a judge, is that he may perform all such acts as the regular appointed or chosen judge might do if he were acting.[1] There is no division of authority as to the powers of the substitute judge over special matter given in charge of the special judge or the specific occasion for which he is appointed. He does not act as an arbitrator or referee. When the special judge is present and presiding, there is a court in all that the term implies, and this there could not be if the judicial presence were wanting. The rulings and decisions of a special judge are judicial rulings and decisions from which appeals will lie, and the records made by him are judicial records. His judgments constitute estoppels, and the process issued for their enforcement has all the force of writs issued upon judgments rendered by the duly elected or appointed judge. It is true that where the special judge fails or refuses to act, the case, for the purpose of appointing another special judge, falls back to the regular judge,[2] but this does not oppose the conclusion we have just stated, for, where the special judge will not or can not act, there is only one judge, and that is the regular judge. There is, as is sufficiently obvious without discussion, an essential difference between cases where the special judge will not or can not act and cases where he assumes the duties and functions imposed upon him by his appointment. As the special judge is so fully invested with judicial power, it is reasonable and logical to conclude, as many of the courts do, that for the occasion or the specific matter his authority is as ample as that of the regular judge. He possesses authority to perform all incidental acts pertaining to the principal act he is authorized to perform.

[1] Morriss *v.* Virginia Ins. Co., 85 Va. 588, S. C. 8 S. E. R. 383; Keith *v.* State, 49 Ark. 439, 446; Henderson *v.* Pope, 39 Ga. 361; Vischer *v.* Talbotton, etc., Co., 34 Ga. 536; Alabama, etc., Co. *v.* Burkett, 42 Ala. 83. See, also, Taylor *v.* Smith, 4 Ga. 133; Walton *v.* Bethune, 37 Ga. 319; Cox *v.* State, 30 Kan. 202.

[2] State *v.* Millsops, 39 La. Ann. 793, S. C. 2 So. R. 595; Little Rock, etc., Co. *v.* Barker, 39 Ark. 491; Cargar *v.* Fee, 119 Ind. 536. See, generally, Singleton *v.* Pidgeon, 21 Ind. 118; Arnold *v.* Norton, 42 Ind. 248; Hutts *v.* Hutts, 51 Ind. 581; Stinson *v.* State, 32 Ind. 124; Glenn *v.* State, 46 Ind. 368; Greenup *v.* Crooks, 50 Ind. 410.

This is but applying the familiar general rule that the grant of a principal power carries with it all the incidental powers necessary to its effective exercise. Under the doctrine we have stated it is rightly held that he may sign a bill of exceptions,[1] and so, too, it is correctly adjudged that the authority of the special judge continues until the whole controversy has been fully and finally determined.[2] Nor do we believe that the court which holds that a special judge may hear and decide an application to vacate a judgment rendered by him unduly extends the general doctrine.[3] The doctrine we have stated fully authorizes the conclusion that a special judge may appoint receivers, master commissioners and other ministers of court in the particular matter or case over which his authority extends,[4] and it also authorizes the conclusion that orders of adjournment and the like may be made by him.[5]

[1] Holliday *v.* Mansker, 44 Mo. App. 465; Shugart *v.* Miles, 125 Ind. 445; Bacon *v.* State, 22 Fla. 46; Cowall *v.* Altchul, 40 Ark. 172; Watkins *v.* State, 37 Ark. 370; Lerch *v.* Emmett, 44 Ind. 331; Matthews *v.* Superior Court, 68 Cal. 638. It must necessarily follow that where there is authority to try and decide a case as special judge, there is the incidental authority to secure parties their rights by making a full and complete record inasmuch as one of the chief duties of a judge is to protect and enforce the rights of parties litigant, and this he could not do if he were denied the power of making a complete record.

[2] Nebraska, etc., Co. *v.* Maxon, 23 Neb. 224, S. C. 36 N. W. R. 492; Dawson *v.* Dawson, 29 Mo. App. 521; State *v.* Sneed, 91 Mo. 552, S. C. 4 S. W. R. 411.

[3] Harris *v.* Musgrave, 72 Tex. 18, S. C. 9. S.W. R. 90. See, generally, Noffzieger *v.* Reed, 98 Mo. 87, S. C. 11 S.W. R. 315; Bowden *v.* Wilson, 21 Fla. 165; Corbin *v.* Berry, 83 N. C. 27; Scherer *v.* Ingerman, 110 Ind. 428; Magruder *v.* Swann, 25 Md. 173; Nugent *v.* Stark, 34 La. Ann. 628; State *v.* Judge, 33 La. Ann. 1293; Staser *v.* Hogan, 120 Ind. 207.

[4] Bush *v.* Lisle, 86 Ky. 504, S. C. 6 S. W. R. 330.

[5] Perkins *v.* Hayward, 124 Ind. 445; Wilson *v.* Piper, 77 Ind. 437; Cincinnati, etc., Co. *v.* Rowe, 17 Ind. 568.

CHAPTER VI.

JURISDICTION.

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§ 229. **Determining the court in which to sue.**—The suit or

action must be brought in a court of competent jurisdiction,[1] that is, a court having authority over both the particular case and the general class of cases of which the particular case is a member. If there is authority over the general class of cases there is jurisdiction of the general subject,[2] so that if no objection is interposed an effective judgment may be rendered, but if there is no jurisdiction of the general subject, then a judgment is an absolute nullity.[3] We make a distinction between jurisdiction of a general class of cases and jurisdiction of the subject of a particular case. To illustrate, a court of equity may have authority over a particular subject, yet a judgment rendered by a court of law may be valid.[4] We do no more at this place than

[1] "After having determined which court has jurisdiction of the case, next follow these two inquiries, first, how is the jurisdiction of the court brought into action? second, by what principles is that action governed?"

[2] State *v.* Kansas City Court, 105 Mo. 299, S. C. 16 S. W. R. 415; Posthlewaite *v.* Ghiselin, 97 Mo. 420, S. C. 10 S. W. R. 482; Turner *v.* Conkey, 132 Ind. 248, S. C. 31 N. E. R. 777.

[3] Lawrence *v.* Wilcock, 11 Ad. & Ell. 941; *In re* Aylmer, L. R., 20 Q. B. Div. 258; Nazro *v.* Cragin, 3 Dill. (U. S. C. C.) 474; Taliferro *v.* Bassett, 3 Ala. 670; Jacks *v.* Moore, 33 Ark. 31; Lindsay *v.* McClelland, 1 Bibb. (Ky.) 262; Banks *v.* Fowler, 3 Litt. (Ky.) 332; Vose *v.* Morton, 4 Cush. 27; Dodson *v.* Scroggs, 47 Mo. 285; Wheelock *v.* Lee, 74 N. Y. 495; Gladden *v.* Elkins, 2 Tyler (Vt.), 218; Randolph *v.* Kinney, 3 Rand (Va.), 394; Cottrell *v.* Thompson, 3 Green (N. J.) 344; Foley *v.* People, Breese (Ill.), 57; Wheeler *v.* State, 24 Wis. 52.

[4] In cases of the class alluded to in the text there must be a timely objection or there will be a waiver. In the case of the Town of Mentz *v.* Cook, 108 N. Y. 504, S. C. 15 N. E. R. 541, it was said: "The answer admitted the authority of the chosen forum to determine the issues presented and made no efforts to withdraw them from that tribunal. It appears to be settled by a very general concurrence of authority that a defendant can not when sued in equity avail himself of the defense that an adequate remedy at law exists, unless he plead it in his answer. Grandin *v.* Le Roy, 2 Paige, 509; Le Roy *v.* Platt, 4 Paige, 77; Druscott *v.* King, 6 N. Y. 147; Cox *v.* James, 45 N. Y. 557; Green *v.* Milbank, 3 Abb. New Cases, 138; Pam *v.* Vilmar, 54 How. Pr. 235. The rule proceeds upon the basis that parties may by their mutual assent litigate their differences in a court of equity, where the assent of the defendant, if withheld, might induce the court to refrain from the exercise of its jurisdiction." In all such cases as that from which we have quoted the jurisdiction concerns the subject and not the person, so that the decisions in those cases do affirm that jurisdiction of the subject, that is, of the particular subject, may be wanting, and yet, if no objection is interposed, the judgment will be valid. It seems to us that there are two kinds

direct attention to the distinction as we shall presently consider it at some length. But whether the judgment that may be rendered will be void or voidable, the lawyer who does his duty will be careful to bring his suit or action in the proper court, for he will assume that his opponent will interpose a timely and effective objection to the jurisdiction where such an objection is tenable. Other considerations, as we have elsewhere shown, enter into the question of the choice of the forum, but the first consideration always is that of jurisdiction, for where there is no jurisdiction no progress can be made. It is necessary not only to invoke the aid of a competent tribunal but to invoke it in the mode prescribed by law, since the subject of the controversy and, as a general rule, the parties interested in it must be brought before the court, for, as Bacon says, "The court has nothing to do with what is not before it."

§ 230. **Jurisdiction of courts—Definition.**—It is difficult to define with strict accuracy the meaning of the term "jurisdiction." In a comprehensive sense it is true that where there is authority there is jurisdiction, but to define jurisdiction simply as authority would be too general, inasmuch as it would give the term a looser and wider meaning than can properly be assigned it, for authority is not always jurisdiction in the strict sense. It is sometimes said that "jurisdiction means to pronounce the law," but this definition is inadequate, and, indeed, inaccurate. The power to decide is jurisdiction.[1] If the power to decide exists there is jurisdiction, for the existence of jurisdiction does not at all depend upon the correctness of the decision, for the power to decide implies the power to decide wrong as well as right.[2] A decision, no matter how erro-

of jurisdiction of the subject, namely, jurisdiction of the general subject and jurisdiction of the subject of the particular suit or action. Thus there may be jurisdiction generally to try actions involving the title to land, but that jurisdiction may be confined to lands lying in the county where the court is held.

[1] Tucker *v.* Sellers, 130 Ind. 514, 519.

[2] Hunt *v.* Hunt, 72 N. Y. 217; Coleman *v.* Floyd, 131 Ind. 330, 334; Snelson *v.* State, 16 Ind. 29; Chicago, etc., Co. *v.* Sutton, 130 Ind. 405, 413; Jackson *v.* Smith, 120 Ind. 520, 522; Yates *v.* Lansing, 5 Johns. 282. See Voorhees *v.* Jackson, 10 Peters, 449; Elliott *v.* Peirsol, 1 Pet. 328; Ely *v.*

neous, is not evidence of the absence of jurisdiction. Whether a complaint does or does not state a cause of action,[1] is, so far as concerns the question of jurisdiction, of no importance; for, if the complaint states a case belonging to a general class over which the authority of the court extends, there is jurisdiction, and the court has power to decide whether the pleading is good or bad. Power, in the sense in which we here employ the word, means rightful authority, for where there is a naked, autocratic assertion of authority, or a clear usurpation of authority there is, in a just sense, no power. Two elements must exist, namely, authority and right. But this does not imply that the authority shall be rightfully exercised, for if power, as here defined, exists, there is jurisdiction although the power may be wrongfully exercised. For the reasons we have given we can not accept as correct the definition that, "jurisdiction is a power constitutionally conferred upon a court, single judge or magistrate, to take cognizance of and decide cases according to law, and to carry their sentence into execution."[2] This definition would be more nearly accurate if it simply declared that jurisdiction is the power to take cognizance of a case or controversy. It has been often said that jurisdiction is the power to hear and determine a case, and this is the generally accepted definition.[3] The presence of authority

Board, 112 Ind. 361, 368; Million *v.* Board, 89 Ind. 5; Young *v.* Sellers, 106 Ind. 101.

[1] Trumble *v.* Williams, 18 Neb. 144; Taylor *v.* Coots, 32 Neb. 30, S. C. 29 Am. St. R. 426; Hunt *v.* Hunt, 72 N. Y. 217; Groenvelt *v.* Burwell, 1 Ld. Raym. 454, 467.

[2] Vance on Jurisdiction, 2. The jurisdiction of a court does not, in any instance, depend upon the merits of the controversy, nor upon the court's decision one way or the other, but it depends upon the right to hear and determine. Le Roy *v.* Clayton, 2 Sawyer, 493; Kendall *v.* United States, 12 Peters, 524; Pullan *v.* Kinsinger, 2 Abbott (U. S. C.) 94. See, generally, Wright *v.* Ware, 50 Ala. 549; Goodman *v.* Winter, 64 Ala. 410; Shroyer *v.* Richmond, 16 Ohio St. 455; Noodriff *v.* Stewart, 63 Ala. 206; Lamar *v.* Gunter, 39 Ala. 324.

[3] United States *v.* Arredondo, 6 Pet. 691; Rhode Island *v.* Massachusetts, 12 Peters, 657; Grignon *v.* Astor, 2 How. (U. S.) 318; *In re* Bogart 2 Sawyer, 396; Smith *v.* Adams, 130 U. S. 167; Riggs *v.* Johnson County, 6 Wall. 166, 187; Holmes *v.* Oregon, etc., Co., 7 Saw. 380. See, generally, Heckman *v.* O'Neal, 10 Cal. 292; Central, etc., Co. *v.* Placer, 43 Cal. 365; Brownsville *v.* Basse, 43 Texas, 440; Hopkins

to proceed in the particular case or controversy is necessarily jurisdiction,[1] since such authority can not be present unless the power to take cognizance of the case resides in the tribunal which assumes control over it. Any movement in a case where the authority to proceed is present, is the assumption and exercise of jurisdiction, the proceedings are *coram judice*, and, although they may be erroneous, they are not void.[2] But, while it is true in a general sense, that the power to decide or determine is jurisdiction, it is not safe to accept this general legal truth without some qualification. If a man should be sued in assumpsit there would, obviously, be no power to decide that he be imprisoned, for such a decision would clearly be void. The reason for this conclusion is that although the general power to hear and determine may exist, there is no rightful authority to adjudge imprisonment since the power of the court in the general class of cases extends only to the rendition of a money judgment. Where the power of the court over a general class of cases is measured and defined by settled rules of law, it is only within the limits of that power that the court can hear and determine. The phrase "the power to hear and determine," does not mean, when rightly interpreted, the authority to adjudge what settled law declares can not be decided in any one of the general class of cases of which the case before the court is a member. Where the general authority ends jurisdiction ceases, but as long as the general authority exists, jurisdiction continues. If, therefore, the court having authority over a general class of cases should err in its judg-

v. Commonwealth, 3 Met.(Mass.)460; Sheldon *v.* Newton, 3 Ohio St. 494; Curry *v.* Miller, 42 Ind. 320; Quarl *v.* Abbett, 102 Ind. 233; *Ex parte* Bennett, 44 Cal. 84; Lampson *v.* Platt, 1 Iowa, 556; Perry *v.* Morse, 57 Vt. 509; Vaughn *v.* Congdon, 56 Vt. 111; Hobart *v.* Hobart, 45 Iowa, 501; Shumway *v.* Stillman, 6 Wend. 447; Bissell *v.* Briggs, 9 Mass. 462; Ferguson *v.* Mahon, 11 Adolp. & Ell. 179, 182; Kinning *v.* Buchanan, 8 C. B. 271.

[1] Turner *v.* Conkey, 132 Ind. 248, S. C. 17 Lawyers' R. Anno. 509, 31 N. E. R. 777.

[2] Dequindre *v.* Williams, 31 Ind. 444; Board *v.* Markle, 46 Ind. 96, 110, citing, among other cases, Cooper *v.* Sunderland, 3 Iowa, 114; Little *v.* Sinnett, 7 Iowa, 324; Sheldon *v.* Wright, 1 Seld. (N. Y. App.) 497; Jackson *v.* Robinson, 4 Wend. 436; Jackson *v.* Crawfords, 12 Wend. 533.

ment in a particular case, the judgment is not void, for jurisdiction is not lost. Where, however, the judgment is entirely beyond and outside of the kind or species of judgments proper in the general class of cases, there is no force in it, but if at all within the class of judgments that may be rendered in the general class of cases, it is effective as against all collateral assaults.[1] If, in other words, it appears from the record that the judgment rendered is one which can not possibly be properly pronounced in any member of the general class to which the particular case belongs it may be logically affirmed that the judgment is one beyond the court's jurisdiction, but if there must be resort to extrinsic evidence to make this appear, or if the judgment is one that might be rendered in any one of the cases belonging to the general class over which the court has authority, it can not be held that the judgment is void because of the absence of jurisdiction, no matter how much of error the record may contain.[2]

§ 231. **Elements of jurisdiction.**—The right to hear and determine judicial controversies, as we have elsewhere shown, resides solely in judicial tribunals, so that an element of jurisdiction is the existence of a tribunal, possessing in some measure, at least, part of the governmental power distributed by

[1] See, *Post*, § 268; *Ex parte* Gordan, 92 Cal. 478, S. C. 27 Am. St. R. 154; People *v.* Liscomb, 60 N. Y. 559; *Ex parte* Page, 49 Mo. 291; Windsor *v.* McVeigh, 93 U. S. 274; Cornett *v.* Williams, 20 Wall. 226; *Ex parte* Lange, 11 Wall. 163; *Ex parte* Yarbrough, 120 U. S. 651; Rosenbaum *v.* Baner, 7 Sup. Ct. R. 633; *In re* Pierce, 44 Wis. 411; *In re* Bond, 9 So. Car. 80, S. C. 30 Am. R. 20; Spoors *v.* Coen, 44 Ohio St. 497, S. C. 9 N. E. R. 132.

[2] The word "jurisdiction," as is true of almost all other words, when used in a statute may have its meaning fixed or controlled by the words with which it is associated. The word is often loosely employed in legislative enactments, and to give it a strict meaning would in many cases unsettle titles and work injustice. See, as touching the general subject, Mann *v.* Martin, 14 Bush, 763, 767; Thornton *v.* McGrath, 1 Duvall (Ky.), 349, 351; Hoffman *v.* Harrington, 28 Mich. 90; Boyles *v.* Boyles, 37 Iowa, 592; Good *v.* Norley, 28 Iowa, 188; Forbes *v.* Halsey, 26 N.Y. 53, 65; Terwilliger *v.* Brown, 44 N. Y. 237; Banta *v.* Reynolds, 3 B. Mon. 80; Terrill *v.* Auchauer, 14 Ohio St. 80; Beach *v.* Atkinson, 87 Ga. 288, S. C. 13 S. E. R. 591; Suydam *v.* Palmer, 63 Ga. 546.

the constitution to the judiciary. It is not necessary that the tribunal should be one *de jure*,[1] but there must be at least a *de facto* tribunal. Where no tribunal can by any legal possibility have an existence there can be no jurisdiction. The tribunal must be one having authority over the general class of cases to which the particular case belongs. We may take a suit to foreclose a mortgage prosecuted in a court having only jurisdiction in criminal cases, as an illustration of the doctrine that where there is no jurisdiction of the general class the proceedings are *coram non judice*, for it is obvious that as to suits to foreclose a mortgage a court of exclusive criminal jurisdiction is as no court. Authority over the general subject, that is, of the general class of cases, constitutes unimpeachable jurisdiction so far as the subject-matter is concerned, and if authority over a particular case is rightfully acquired there can be no successful attack in any form upon the jurisdiction, no matter whether objections are or are not interposed. Where there is authority over a general class of cases but none over a particular member of the class, then, a timely objection may be fatal to the exercise of jurisdiction in the particular instance. Thus, if the circuit court or district court has general jurisdiction of all actions to recover possession of lands, but that jurisdiction is confined to land situate in the county wherein the court sits, we believe that if the parties appear and make no objection a judgment would not be void, although the land involved in the particular case may be situated in a county different from that in which the court is held.[2] It is undoubtedly true that authority over the person is essential to the existence of plenary jurisdiction, but it is to be borne in mind that jurisdiction to render decrees or judgment affecting property may exist, although, in the strict sense, there is no complete jurisdiction of the person. It will lead to error to give too wide a meaning to the statement so often made by text-writers and judges that two indispensable elements of jurisdiction are authority over the subject-matter and over the person.[3] One of

[1] *Ante*, § 164, note 4.

[2] *Post*, § 240 and authorities cited in note.

[3] In the case of Hope *v.* Blair, 105 Mo. 85, S. C. 24 Am. St. 366, the court said: "The subject-matter of a suit,

the elements of jurisdiction is said to be "that the matter is within the issues."[1] We can not assent to the broad doctrine that where a matter is not within the issues there is no jurisdiction. It seems to us that the courts which unqualifiedly declare that the question of jurisdiction depends upon whether a matter is or is not within the issues, are in error, and we trust we may be pardoned for saying that the error is due, in the main, to the fact that they confuse the doctrine of *res judicatæ* with that of collateral attack and lose sight of the distinction between void and voidable proceedings. Whether a matter is or is not within the jurisdiction of the court must, in most cases, depend upon whether it is or is not germane to a particular case belonging to a class over which the authority of the tribunal extends.[2] Necessarily in proceeding with a case, or, in hearing and determining

when reference is made to questions of jurisdiction, is defined to mean 'the nature of the cause of action and the relief sought.'" Cooper *v.* Reynolds, 10 Wall. 308. This we believe to be entirely correct, but when it is added, as is done in the case from which we have quoted, that, "A court may be said to have jurisdiction of the subject-matter of a suit when it has a right to determine the controversy or question in issue between the parties or grant the relief prayed," we think, we say with deference, that the rule is not correctly stated. Whether there is authority to grant the relief prayed or not, does not necessarily affect the question of jurisdiction, nor is the question affected by the consideration of what is or is not within the issues. In the case from which the above extract is taken were cited the following cases: Adams *v.* Cowles, 95 Mo. 501, S. C. 6 Am. St. R. 74; Brown *v.* Woody, 64 Mo. 547 Higgins *v.* Peltzer, 49 Mo. 152.

[1] The statement which follows, taken from the opinion in the case of Munday *v.* Vail, 34 N. J. L. 418, is subject to the criticism that it makes it an element of jurisdiction that the matter be within the issues. "Jurisdiction," said the court, "may be defined to be the right to adjudicate concerning the subject-matter in a given case. To constitute this there are three essentials: The court must have cognizance of the class of cases to which the one adjudged belongs; 2, the proper parties must be present; and, 3, the point decided must be, in substance and effect, within the issues." See, also, Jones *v.* Davenport, 45 N. J. Eq. 77, S. C. 17 Atl. R. 570.

[2] Lewis *v.* Morrow, 89 Mo. 174, S. C. 1 S. W. R. 93; Fletcher *v.* Holmes, 25 Ind. 458; Allie *v.* Schmitz, 17 Wis. 169; Board, etc., *v.* Mineral Point, etc., Co., 24 Wis. 93; Tolman *v.* Jones, 114 Ill. 147; Real Estate, etc., Inst. *v.* Collonious, 63 Mo. 290; O'Reilly *v.* Nicholson, 45 Mo. 160; McCrillis *v.* Harrison County, 63 Iowa, 592, S. C. 19 N. W. R. 679; Davenport, etc., Ass'n *v.* Schmidt, 15 Iowa, 213. See, generally, Chase *v.* Christianson, 41 Cal. 253; Buice *v.* Lowman, etc., Co., 64 Ga. 769; Ketchum *v.* White, 72 Iowa, 193, S. C. 33 N. W. R. 627; Chaffee *v.* Hooper, 54 Vt. 513; Kendall *v.* Math-

it, the court must decide what is or is not within the issues, so that while there may be error there can not be an entire absence of power. If any principle in the branch of the law we are discussing can be regarded as too firmly settled to be shaken, it is, that jurisdiction of the subject can not be conferred by consent, and, certainly, consent that the court may decide a matter not within the issues would preclude the party from assailing the decision on appeal, and, surely, if it be unassailable on appeal it can not be void. Issues are framed by the parties while jurisdiction is conferred by law, and it seems to us that consent, tacit or express, may give authority to decide any question arising in a case belonging to a class over which the law has given the tribunal authority. If a defendant in an action should consent that judgment should go upon two promissory notes where one only was declared on, the judgment would not be erroneous, much less void, yet, if jurisdiction depends upon whether a matter is within the issues, consent, in such a case as that supposed, would go for nothing. It is a familiar rule that a ministerial officer is protected by process issued upon a judgment within the general jurisdiction of the court, but if it be true that jurisdiction depends upon whether a matter adjudicated is or is not within the issues, this rule is practically without force. We can not believe that a ministerial officer is bound, at his peril, to ascertain and determine whether a matter is within the issues, and, yet, this he must do if it be true that jurisdiction depends upon whether a judgment or decree is within the issues joined by the parties. We are fully persuaded, notwithstanding the strong array of authority, that "the state of being within the issues" is not always an element of jurisdiction.

er, 48 Tex. 585; Smith *v.* Keen, 26 Me. 411. But, see, *contra*, Blachlock *v.* Stewart, 2 Bay (So. Car.), 363; Spoors *v.* Coen, 44 Ohio St. 497, S. C. 9 N. E. R. 132; Silsbe *v.* Lucas, 36 Ill. 462; Strobe *v.* Downer, 13 Wis. 11; Waterman *v.* Laurence, 19 Cal. 210, 217; City of Peru *v.* Bearss, 55 Ind. 576; Reynolds *v.* Stockton, 140 U. S. 254. At the risk of being thought presumptuous we venture to say that the course of reasoning pursued and the authorities cited in the case last named show that the high tribunal that decided the case acted upon a mistaken theory, for it is clear that the court treated the case as one governed by the doctrine of *res adjudicatæ*, whereas the central question was whether the decree in controversy was absolutely void.

§ 232. **Source of jurisdiction over legal controversies.**— Traced back to its ultimate source the power to hear and determine controversies concerning the rights of persons or things will be found to come from the people. The people, by virtue of their sovereign right, create departments of government and distribute the various elements of governmental sovereignty. This they do directly by the constitution framed by them, or by delegating, either expressly or impliedly, the power to the legislature.[1] The general theory is that the legislature possesses the law-making power except as limited by the constitution, but this theory can not be so extended as to make the legislative authority unbounded, since that would imply power to subvert the fundamental principle of distributive powers by a unification of the governmental departments. In a broad sense the jurisdiction of the courts is derived from the law of the land.[2] Courts can not be created by parties, nor can parties by agreement invest tribunals with jurisdiction over matters which require judicial investigation and determination. But the law of the land is not found exclusively in written constitutions or statutes, for there is an immense body of law that, in a legal sense, remains unwritten. To this unwritten law it is often necessary to appeal in order to fully ascertain and accurately mark the jurisdiction of our courts. The unwritten law yields, of course, to the written law embodied in constitutions and statutes, but constitutions and statutes have not entirely displaced it; on the contrary, the unwritten law of the land is not shorn of much of its vigor or power. It is, therefore, true that the jurisdiction of courts, employing the term jurisdiction in a broad and comprehensive sense, is derived in part from the unwritten law. Somewhere in the law must be found a rule or provision conferring jurisdiction of the general subject or no such jurisdiction can exist. There is diversity of opinion upon the question as to what constitutes

[1] *Ante*, §§ 144, 145, 147.

[2] Missouri, etc., Co. *v.* National Bank, 74 Ill. 217; Martin *v.* Hunter's Lessee, 1 Wheat. 304; Houston *v.* Moore, 5 Wheat. 1; State *v.* Smith, 65 N. Car. 369; Perkins *v.* Corbin, 45 Ala. 103; Withers *v.* Patterson, 27 Texas, 491; Belcher *v.* Chambers, 53 Cal. 635.

the general subject, but none upon the proposition that consent can not confer such jurisdiction.[1] If a suit or action is commenced in a tribunal where there is an absolute want of jurisdiction, subsequent legislation, will not, it has been held, give validity to the proceedings.[2] The better rule is that a party can not do by indirection what he may not do directly, so that when the amount in controversy is the test of jurisdiction, a party can not create jurisdiction by giving a fictitious credit.[3] This general principle is illustrated in the cases which declare that over feigned or fictitious cases there is no jurisdiction,[4] but we suppose that where the record does not, on its face, reveal the true character of the case, a collateral attack would not be successful, inasmuch as the rule is that extrinsic evidence can not be resorted to for the purpose of showing a judgment to be void.

§ 233. **Exercise of jurisdiction—Instrumentalities.**—Where there is power any movement in a cause is the exercise of ju-

[1] Weeden *v.* Richmond, 9 R. I. 128, S. C. 98 Am. Dec. 373; Muldrow *v.* Norris, 2 Cal. 74, S. C. 56 Am. Dec. 313; Hawkins *v.* Hughes, 87 N. Car. 115; Michaels *v.* Hine, 3 Green (Iowa), 470; Andrews *v.* Wheaton, 23 Conn. 112; Central Bank *v.* Gibson, 11 Ga. 453; Damp *v.* Dane, 29 Wis. 419; State *v.* Judge, 21 La. Ann. 258; Cottrell *v.* Den, 15 N. J. L. 345; Abat *v.* Songy, 7 Mart. (La.) 274; Bent *v.* Graves, 3 McCord, 280; Green *v.* Collins, 6 Iredell, 139; State *v.* Bonney, 34 Me. 223; State *v.* Tolleston, 53 Fed. R. 18; Crane *v.* Farmer, 14 Colo. 294, S. C. 23 Pac. R. 455; Planters' Ins. Co. *v.* Cramer, 47 Miss. 200; Marbury *v.* Madison, 1 Cranch, 137; Board *v.* Newman, 35 Ind. 10; Smith *v.* Myers, 109 Ind. 1; Trotter *v.* Neal, 50 Ark. 340, S. C. 7 S. W. R. 384; State *v.* Richmond, 6 Fost. (N. H.) 232; Baker *v.* Chisholm, 3 Texas, 157; Chapman *v.* Morgan, 2 Greene (Iowa), 374; Tilus *v.* Relyea, 8 Abb. Pr. R. 177; Burns *v.* Nash, 32 Ill. App. 552; *In re* Radde, 9 N. Y. Supp. 812, 2 Connoly, 293; Fields *v.* Walker, 23 Ala. 155; McCall *v.* Peachy, 1 Call. (Va.) 55; Dicks *v.* Hatch, 10 Iowa, 380; Dodson *v.* Scroggs, 47 Mo. 285; Georgia, etc., Assn. *v.* McGowan, 59 Ga. 811.

[2] Morn *v.* Kuzac, 21 La. Ann. 754.

[3] Bent *v.* Graves, 3 McCord, 280, S. C. 15 Am. Dec. 632; Simpson *v.* McMillion, 1 Nott. & McC. 192; St. Amand *v.* Gerry, 2 Nott. & McC. 486; Horton *v.* Sawyer, 59 Ind. 587; Gage *v.* Clark, 22 Ind. 163; Thompson *v.* Kerr, 17 Ind. 288; James *v.* Stokes, 77 Va. 225, 227.

[4] Cleveland *v.* Chamberlain, 1 Black (U. S.), 419; Brewington *v.* Lowe, 1 Ind. 21; Hotchkiss *v.* Jones, 4 Ind. 260; Smith *v.* Junction, etc., Co., 29 Ind. 546; Lord *v.* Veazie, 8 How. (U. S.) 250, 254; Plainfield *v.* Plainfield, 67 Wis. 525

risdiction whether there is or is not an explicit assertion that jurisdiction exists. There is always and of necessity authority to decide upon the question of jurisdiction, for a decision that jurisdiction does not exist is made where the court refuses to entertain authority over the case, so that in every instance there is some exercise of authority, whether jurisdiction be assumed or declined.[1] When a cause in which there is authority to proceed is presented to a tribunal it must evidence its decision upon its own jurisdiction by an order of dismissal or some other appropriate order. Jurisdiction is exercised in every instance where a decision is made, no matter what may be the character of the decision. If a party who invokes the jurisdiction of the court believes that a decision refusing to entertain jurisdiction is erroneous he certainly has a right of appeal, provided, of course, the decision is given in a class of cases that are appealable. There is, therefore, some exercise of jurisdiction in every case presented for the consideration of a judicial tribunal, and the cases which hold that where there is no jurisdiction there can not be an order of dismissal are wrong and those which hold that there may be such an order are right.[2] An appellate tribunal necessarily exercises its powers in many respects in a different mode from that pursued by a court of original jurisdiction, but it is here necessary to note only one particular wherein the mode differs. Where a trial court has no jurisdiction to proceed it can do no more than direct a dismissal, but where the trial court assumes jurisdiction where it has none and enters a decree or judgment, and the case is appealed, the appellate tribunal may properly order a dismissal, for if it simply declined to entertain jurisdiction parties would be embarrassed by the judgment rendered in the *nisi prius* court.[3] In the case referred to in

[1] King *v.* Poole, 36 Barb. 242.

[2] Robertson *v.* State, 109 Ind. 79.

[3] United States *v.* Huckabee, 16 Wall. 414, 435. The court in the course of the opinion said: "Usually where a court has no jurisdiction of a case, the correct practice is to dismiss the suit, but a different rule necessarily prevails in an appellate court in cases where the subordinate court was without jurisdiction and has given judgment or decree for the plaintiff or improperly decreed affirmative relief to a claimant. In such a case the judg-

the note, the doctrine is, we venture to say with deference to the great court by which the decision was given, too strongly stated, for, if the judgment of the trial court was rendered without jurisdiction, it would do no more than annoy or embarrass the parties, since it would be, if *coram non judice*, a mere nullity. Jurisdiction of a general class of cases may exist and yet a judgment be void. This is true where there is nothing to call the jurisdiction into exercise, for we suppose that where there is nothing at all to invoke jurisdiction there can be no exercise of it and hence no valid decision.[1] If, for example, an action can only be commenced by a complaint or declaration and there is absolutely nothing assuming to be such a pleading, there is no foundation for the exercise of jurisdiction and if no foundation no right to exercise authority. But we are far from asserting that there must be a sufficient complaint or declaration, for, no matter how full of defects the pleading may be, yet jurisdiction may, as we have elsewhere shown,[2] be assumed and exercised. In order to give full validity to judicial proceedings and impress upon them strict regularity, jurisdiction must be exercised in the mode prescribed by law, but the failure to so exercise it when it has once attached does not make the proceedings *coram non judice*. Such a failure may constitute error available on appeal but it does not affect the question of the existence of jurisdiction nor the question of the mode of its exercise in such a sense as to make the proceedings void. As all judicial power resides in courts it follows that such power must be exercised by judicial tribunals. Judges or judicial officers are the instru-

ment or decree in the court below must be reversed, else the party which prevailed there would have the benefit of such judgment or decree, though rendered by a court which had no authority to hear and determine the matter in controversy."

[1] It is true that such cases are very rare, and that in actual practice they are seldom encountered, but there may be such cases. We do not refer to such cases so much for the purpose of calling attention to their existence as for the purpose of enforcing the proposition that it is not always true that where there is jurisdiction of the general subject and process served the proceedings can not be void.

[2] *Ante*, § 230.

mentalities for the exercise of judicial power. If the record shows that the person who assumes to be a judge can by no legal possibility be such there is no court and consequently no jurisdiction nor valid exercise of jurisdiction. So, if it appears that a ministerial or executive officer has arrogated to himself powers or functions of a judge and has assumed to decide controversies requiring judicial investigation and determination the attempt to exercise jurisdiction is abortive and all proceedings are void. Such an usurper can not rightfully take a single step for his proceedings are destitute of the faintest tint of right. It is sometimes said that the courts have no jurisdiction over the constitutional acts of the executive or legislative departments. This statement is misleading. We believe the better doctrine to be that a court can not control a separate department of government as, for instance, the executive,[1] but we do not believe that there is an utter absence of jurisdiction. In such cases there is a general jurisdiction and if a judgment is given in the exercise of that jurisdiction it may be erroneous but it is not void. If not void there is jurisdiction, for to assert that a judgment is not void is to affirm that jurisdiction exists. If the jurisdiction exists but is wrongfully exercised there may be error in the proceedings rendering the judgment voidable, but there is not such an absence of authority as authorizes the judgment to be treated as an absolute nullity. There is, it is evident, a difference between the exercise of jurisdiction and the existence of jurisdiction. In the

[1] Bates *v.* Taylor, 87 Tenn. 319, S. C. 28 Am. L. Reg. 341; Sutherland *v.* Governor, 29 Mich. 320, S. C. 18 Am. R. 89; Hovey *v.* State, 127 Ind. 588; Hawkins *v.* Governor, 1 Ark. 570; State *v.* Governor, 25 N. J. L. 331; People *v.* Bissell, 19 Ill. 229; Maman *v.* Smith, 8 R. I. 192; Rice *v.* Austin, 19 Minn. 103; Appeal of Hartranft, 85 Pa. St. 433. See, generally, Decatur *v.* Paulding, 14 Pet. 497; Brashear *v.* Mason, 6 How. (U. S.) 92; United States *v.* Guthrie, 17 How. (U. S.) 284; March *v.* State, 44 Texas, 64; State *v.* Cahen, 28 La. Ann. 645; Cragin *v.* Powell, 128 U. S. 691; Steel *v.* Smelting Co., 106 U. S. 447; United States *v.* Throckmorton, 98 U. S. 61; Gazzam *v.* Phillips, 20 How. (U. S.) 372; Niswanger *v.* Saunders, 1 Wall. 424; Belcher *v.* Linn, 24 How. (U. S.) 508; United States *v.* Seaman, 17 How. (U. S.) 225; Pacific, etc., Co. *v.* Governor, 23 Mo. 353; Smith *v.* Myers, 109 Ind. 1.

one class of cases the proceedings may be void but ordinarily they are only voidable, while in the other class, that in which there is an entire absence of jurisdiction, they are invariably void.

§ 234. **Classification.**—Jurisdiction as respects the tribunal may be classified as: 1. Appellate jurisdiction. 2. Original jurisdiction. A further and minor division of jurisdiction considered with reference to the tribunal is this: 1. Exclusive jurisdiction. 2. Concurrent jurisdiction. A classification of jurisdiction with reference to the general authority of courts gives us this division: 1. Jurisdiction of the general subject. 2. Jurisdiction of the particular subject. Another division made necessary, or, at least, proper, by the difference between the two great systems of jurisprudence, equity and law is this: 1. Equity jurisdiction. 2. Law jurisdiction. As regards the person there is but one great branch and that is: Jurisdiction of the person. There is a species of jurisdiction called, jurisdiction *in rem*, but this is really a subdivision of the division of jurisdiction of the subject, or as it is often called jurisdiction of the subject-matter. Another division of jurisdiction is denominated, territorial jurisdiction, and this is little else than a subdivision of the division called the jurisdiction of the general subject. A division with respect to the character of the authority possessed by courts is this: 1. Civil. 2. Criminal. Other divisions are given as ecclesiastical and military, but these divisions we simply mention as it is not our purpose to treat of them, nor do we think it necessary to consider the division civil and criminal jurisdiction, since what is said upon other divisions necessarily applies to that division which is a mere cross-division of a class sufficiently well divided. It is almost impossible to make a strictly logical classification without departing from the accepted legal terminology, and greater confusion would be produced by such a departure than is warranted even though a departure might insure a better classification.

§ 235. **Appellate jurisdiction.**—The authority to review, re-

vise, reverse or adjudicate upon matters passed upon by a court of original jurisdiction constitutes appellate jurisdiction.[1] Appellate jurisdiction exists only where there is a judgment or decision of another tribunal to be reviewed,[2] and is essentially one of review. It is always implied that there is a removal from one tribunal to another and, generally, from an inferior to a superior tribunal. When the jurisdiction of the appellate court attaches that of the court from which the appeal[3] is taken is ousted, since one case can not be in two tribunals, where the grades are different at the same time.[4]

[1] Judge Story says: "The essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted, and does not create that cause. In reference to judicial tribunals, an appellate jurisdiction, therefore, necessarily implies that the subject-matter has already been instituted in and acted upon by some other court, whose judgment or proceedings are to be revised. This appellate jurisdiction may be exercised in a variety of forms, and, indeed, in any form which the legislature may choose to prescribe, but still the substance must exist before the form can be applied to it." 2 Story Const., § 1761; Elliott's Appellate Procedure, §§ 16, 17.

[2] In Piqua Bank *v.* Knoup, 6 Ohio St. 342, the court said: "Appellate jurisdiction is the cognizance which a superior court takes of a case removed to it by appeal or writ of error from the decision of an inferior tribunal. The power of the appellate court necessarily includes the power not only to reverse the judgment, but also to control and direct the subsequent action of the subordinate court. Appellate jurisdiction, therefore, always implies the existence of subordinate courts in the same judicial organization over which the court in which it is vested exercises a supervising or correcting control."

[3] We use the term appeal in a generic sense, and as meaning the removal of a case to a court of review or a court for the correction of errors. A case may be carried from the court of original jurisdiction to the appellate tribunal by a writ of error or by appeal, but, so far as concerns the question of jurisdiction here under discussion, the mode of removal is not important, although it is important where the question is whether the appeal has been properly taken or the writ of error duly sued out and prosecuted. See Elliott's Appellate Procedure, §§ 16 to 24 inclusive; Curtis' Jurisdiction of Courts of the United States, 61; Vandeveer *v.* Holcomb, 17 N. J. Eq. 547. The right of appeal is statutory. *Ex parte* McCardle, 7 Wall. 506; Kundinger *v.* Saginaw, 59 Mich. 355, S. C. 26 N. W. R. 634.

[4] Allen *v.* Allen, 80 Ala. 154; Boynton *v.* Foster, 7 Metc. 415; Bryan *v.* Berry, 8 Cal. 130; Baggs *v.* Smith, 53 Cal. 88; Burgess *v.* O'Donoghue, 90 Mo. 299, 2 S. W. R. 303; Elgin Lumber Co. *v.* Langman, 23 Ill. App. 250; State *v.* Duffel, 41 La. Ann. 958; Stephens *v.* Koonce, 106 N. C. 222, S. C. 10 S. E. R. 996; Kimberly *v.* Arms, 40 Fed. R. 548; Ensminger *v.* Powers, 108 U. S.

The principle involved in the cases to which we refer in the note requires that cases should not be appealed piecemeal but should go to the appellate tribunal as an entirety.[1] There are, however, exceptions to this general rule and in most, if not in all, of the States provision is made for appeals from interlocutory orders. As a general rule—and the rule is one of wide sweep—appeals lie only from final judgments or decrees.[2] It is the prerogative of the court of last resort to determine for itself its own jurisdiction, and hence no other tribunal can determine conclusively whether a case is or is not appealable.[3] As the appeal deprives the trial court of jurisdiction and lodges the case in the appellate tribunal, the trial court can not take

292; Mitchell *v.* United States, 9 Pet. 711; Saltmarsh *v.* Tuthill, 12 How. U. S. 387; Bronson *v.* La Crosse, etc., Co., 1 Wall. 405; Stewart *v.* Stringer, 41 Mo. 400, S. C. 97 Am. Dec. 278; Helm *v.* Boone, 6 J. J. Marsh. 351, S. C. 22 Am. Dec. 75; Planters Bank *v.* Neely, 7 How. (Miss.) 80, S. C. 40 Am. Dec. 51; State *v.* Kolsem, 130 Ind. 434; Elliott's Appellate Procedure, § 541.

[1] Pittman *v.* Wakefield, 90 Ky. 171, 13 S. W. R. 525; Feder *v.* Field, 117 Ind. 386; Clowes *v.* Dickenson, 8 Cowen, 328; Kelsey *v.* Western, 2 N. Y. 500, 505; Norbury *v.* Meade, 3 Bligh, 261; Parker *v.* Morrell, 2 Ph. Ch. 453, 461; 2 Daniels Ch. Pr. (5th ed.) 1467; Elliott's Appellate Procedure, § 18.

[2] Dale *v.* Copple, 53 Mo. 321; Jones *v.* Snodgrass, 54 Mo. 597; Western Union Tel. Co. *v.* Locke, 107 Ind. 9; Miller *v.* State, 8 Ind. 325; Walser *v.* Haley, 61 Mo. 445; Guardians, etc., Bank *v.* Reilly, 8 Mo. App. 544; State *v.* Sutterfield, 54 Mo. 391; Hawkins *v.* Massie, 62 Mo. 552; McCollum *v.* Eager, 2 How. (U. S.) 61; Walker *v.* Spencer, 86 N. Y. 162; Piedmont, etc., Co. *v.* Buxton, 105 N. C. 74, S. C. 11 S. E. R. 264; Home for Inebriates *v.* Kaplan, 84 Cal. 486, 24 Pac. R. 119; Davie *v.* Davie, 52 Ark. 221, S. C. 20 Am. St. R. 170; *In re* Davis Est., 11 Mont. 1, 27 Pac. R. 342. As to what may or may not be considered a final judgment from which an appeal will lie, see Farrell *v.* State, 7 Ind. 345; Johnson *v.* Northern, etc., Co., 39 Minn. 30, S. C. 38 N.W. R. 804; Kirchner *v.* Wood, 48 Mich. 199; Griffee *v.* Mann, 62 Md. 248; Rubey *v.* Shain, 51 Mo. 116; National Banking, etc., Co. *v.* Knaup, 55 Mo. 154; Lamon *v.* McKee, 7 Mackey, 447; *In re* Ohm's Estate, 82 Cal. 160, S. C. 22 Pac. R. 927; Logan *v.* Pennsylvania Co., 132 Pa. St. 403, S. C. 19 Atl. R. 137; Forbes *v.* Porter, 23 Fla. 47, S. C. 1 So. R. 336; Snavely *v.* Abbott Buggy Co., 36 Kan. 106, 12 Pac. R. 522; Simpson *v.* Kirchbaum, 43 Kan. 36, S. C. 22 Pac. R. 1018; Duncan *v.* Forgey, 25 Mo. App. 310; Quebec Bank *v.* Carroll (So. Dak.), 44 N. W. R. 723; Red River Bank *v.* Freeman (N. Dak.), 46 N.W. R. 36; School District of Adams County *v.* Cooper, 29 Neb. 433, S. C. 45 N.W. R. 618. See, for a full collection of authorities, Elliott's Appellate Procedure, Chap. V.

[3] Hungerford *v.* Cushing, 8 Wis. 320; Benson *v.* Christian, 129 Ind. 535; Branson *v.* Studabaker, 133 Ind. 147, S. C. 33 N. E. R. 98.

any action in the case proper,[1] although it may act upon purely collateral or supplemental matters.[2] Appellate jurisdiction of the general subject must come from the law, for parties can not confer it by consent.[3] The general rule is said to be this: Where the trial court has no jurisdiction of the general subject the appellate tribunal acquires none.[4] But it is evident that this statement requires qualification, for there must, of necessity, be authority in the appellate tribunal to ascertain and decide whether the trial court had jurisdiction and to the extent that there is authority to investigate and decide, to that extent there is jurisdiction. The jurisdiction in cases of the character under immediate mention is, it is obvious, of the narrowest and most limited nature. No appellate court, no matter how exalted its rank, can do more in such cases than inquire into the question of jurisdiction and make an order disposing of the appeal.[5] Where there is no jurisdiction of the

[1] Beal *v.* Chase, 31 Mich. 490; Levi *v.* Karrick, 15 Iowa, 444; McGlaughlin *v.* O'Rourke, 12 Iowa, 459; Turner *v.* First National Bank, 26 Iowa, 562. See, generally, Townsend *v.* Townsend, 60 Mo. 246; State *v.* Musick, 71 Mo. 401; Lewis *v.* Lewis, 20 Mo. App. 546; Cralle *v.* Cralle, 81 Va. 773; Spears *v.* Mathews, 66 N. Y. 127; Pasour *v.* Lineberger, 90 N. C. 159; Western, etc., Co. *v.* State, 69 Ga. 524; Skinner *v.* Bland, 87 N. C. 168; Keyser *v.* Farr, 105 U. S. 265; Whaley *v.* Charleston, 8 So. Car. 344; Harrison *v.* Trader, 29 Ark. 85; Stewart *v.* Taylor, 68 Cal. 5; State *v.* Hamill, 6 La. Ann. 257.

[2] State *v.* Houston, 35 La. Ann. 236; State *v.* Clark, 33 La. Ann. 422; Baughman *v.* Calveras, 72 Cal. 512; Moore *v.* Jordan, 65 Texas, 395; Goddard *v.* Ordway, 94 U. S. 672; Hinson *v.* Adrian, 91 N. C. 372; Spring *v.* South Carolina Ins. Co., 6 Wheat. 519; Board *v.* Newman, 35 Ind. 10.

[3] Mathie *v.* McIntosh, 40 Wis. 120; Kelsey *v.* Forsythe, 21 How. (U. S.) 85; Merrill *v.* Petty, 16 Wall. 338; Benford *v.* Daniels, 20 Ala. 445; Hamilton *v.* Buxton, 5 Ark. 400; People *v.* Royal, 1 Scam. (Ill.) 557; Peak *v.* People, 71 Ill. 278; Smith *v.* Brown, 136 Mass. 416; Tippack *v.* Briant, 63 Mo. 580; Phillips *v.* Welch, 11 Nev. 187; McFee *v.* Harris, 25 Pa. St. 102; Whitman *v.* Weller, 39 Ind. 515; Board *v.* Newman, 35 Ind. 10.

[4] Mays *v.* Dooley, 59 Ind. 287; Pritchard *v.* Bartholomew, 45 Ind. 219; Boggs *v.* Near, 20 Ind. 395; Miller *v.* Beal, 26 Ind. 234; Horton *v.* Sawyer, 59 Ind. 587. See, generally, Ames *v.* Boland, 1 Minn. 365; Ginn *v.* Rogers, 4 Gil. (Ill.) 131; Dicks *v.* Hatch, 10 Iowa, 380; Smiths *v.* Dubuque County, 1 Ia. 492; O'Hagen *v.* O'Hagen, 14 Ia. 264; Cerro Gordo County *v.* Wright County, 59 Ia. 485; Groves *v.* Richmond, 53 Iowa, 570; Knox *v.* Beirne, 4 Ark. 460; Osgood *v.* Thurston, 23 Pick. 110.

[5] United States *v.* Huckabee, 16 Wall. 414. See, generally, *Ex parte* Terry, 128 U. S. 289; *Ex parte* Lange, 18

general subject a judgment is absolutely void and as a void thing is as nothing, it must follow that all that the appellate tribunal can do is to ascertain and decide that there is no jurisdiction, for, where there is a void proceeding, there is nothing upon which jurisdiction can fasten.

§ 236. **Original jurisdiction.**—Where jurisdiction is in the first instance bestowed upon a court or class of courts, it is original. As a rule, original jurisdiction is conferred upon trial courts and not upon appellate tribunals or courts for the correction of errors, so that, when the term "courts of original jurisdiction" is employed reference is usually made to trial courts, but—no constitutional provision forbidding—appellate tribunals may be invested with some original jurisdiction. The two classes, appellate jurisdiction and original jurisdiction, are so essentially different that they can not, without confusion and evil, be blended and their exercise be committed to one tribunal.[1] Where the constitution gives only appellate jurisdiction to a court the legislature can not confer upon it original jurisdiction.[2] It is to be observed, however, that all judicial tribunals of a high rank possess, as an inherent, or incidental power, jurisdiction that is in its nature original, but this does not make such tribunals courts of original juris-

Wall. 163; *Ex parte* Parks, 93 U. S. 18; *Ex parte* Siebold, 100 U. S. 371; *Ex parte* Fisk, 113 U. S. 713.

[1] Commonwealth *v.* Smith, 4 Binney, 117; State *v.* Stewart, 32 Mo. 379; *Ex parte* Logan Branch, etc., Bank, 1 Ohio St. 432; Merrill *v.* Lake, 16 Ohio, 373; Campbell *v.* Campbell, 22 Ill. 664; Bryant *v.* People, 71 Ill. 32. The courts, perceiving the evil of blending appellate and original jurisdiction, have done what they could to prevent such an amalgamation, and even where there was constitutional power to blend the two jurisdictions have given statutes a very strict construction. State *v.* Lawrence, 38 Mo. 535; State *v.* Vail, 53 Mo. 97, 107; Foster *v.* State, 41 Mo. 61; Vail *v.* Dinning, 44 Mo. 210. See, generally, Attorney General *v.* Blossom, 1 Wis. 277; Attorney General *v.* City of Eau Claire, 37 Wis. 400, 443.

[2] Cohens *v.* Virginia, 6 Wheat. 264; *In re* Metger, 5 How. (U. S.) 176, 191; *In re* Kaine, 14 How. (U. S.) 103; Caulfield *v.* Hudson, 3 Cal. 390; Hermannes *v.* Simons, 2 Cal. 464; Parsons *v.* Thorlume, etc., Co., 5 Cal. 44; Townsend *v.* Brooks, 5 Cal. 53; Hodgson *v.* Bowerbank, 5 Cranch, 303; Steamer St. Lawrence, 1 Black (U. S.), 522; The Lottawanna, 21 Wall. 558; People *v.* Turner, 1 Cal. 143, S. C. 52 Am. Dec. 295.

diction. The jurisdiction of appellate tribunals which is original in its nature is auxiliary and exists for the reason that without it such tribunals could not effectively exercise their principal powers.[1] This ancillary jurisdiction enables appellate tribunals to issue writs of injunction, of mandamus and other writs in aid of their appellate jurisdiction.[2]

§ 237. **Exclusive jurisdiction — Concurrent jurisdiction.** — Where a court is invested with authority over a general class of cases and the authority of other courts is denied, either expressly or by implication, the jurisdiction is exclusive. A grant of jurisdiction by the constitution in affirmative words will,

[1] This doctrine is asserted in a very strong opinion by Thurman, J., delivered in the case of Kent *v.* Mahaffy, 2 Ohio St. 498. We quote from that opinion the following: "That we can not allow an injunction, in a case pending in this court, upon an appeal is very clear. A decree may be the very object of the suit—the final decree sought—and so a provisional injunction, during the pendency of the suit, may be necessary for the purposes of justice. The power to allow these is a part of the appellate jurisdiction, the grant of which is authorized by the constitution, and has been made by the law. But to allow an injunction in a suit pending in another court would be an exercise of original and not of appellate jurisdiction. Now, the original jurisdiction conferred upon this court by the constitution is limited to *quo warranto*, *mandamus*, *habeas corpus* and *procedendo*, Art. IV, § 2. This is the only original jurisdiction granted by that instrument, and it would be wholly inconsistent with and, in a great measure, destructive of the judicial system it ordains, to suppose that this original jurisdiction can be enlarged by law. It is true there is no express prohibition against it, but none was necessary. We can exercise only such powers as the constitution itself confers, or authorizes the legislature to grant. We can derive no power elsewhere. It follows that, to negative the existence of a power it is not necessary to show that it is forbidden by the constitution. It is sufficient that that instrument neither directly nor indirectly confers it." Much to the same effect is the language of the court in Campbell *v.* Campbell, 22 Ill. 664, where it was said: "Now, unless it can be shown that original applications for injunction is an exercise of the appellate jurisdiction of this court, we can not act. That it is not such an exercise no one will deny. Emphatically this is an appellate court only, having original jurisdiction in a few specified cases."

[2] Sheeks *v.* Fillion, 29 N. E. R. 443; Leech *v.* State, 78 Ind. 570, 579; Fish *v.* Weatherwax, 2 Johns. Cases, 215; *Ex parte* Parker, 131 U. S. 221; State *v.* Kansas City Court, 97 Mo. 331, S. C. 10 S. W. R. 855. See authorities cited in Elliott's Appellate Procedure, § 512. But see, *contra*, Hicks *v.* Michael, 15 Cal. 107, 114.

although there are no negative restraining words, create exclusive jurisdiction, for the rule in such cases is, that the express mention of one thing implies the exclusion of all others.[1] The same doctrine applies where the jurisdiction is defined by statute, but not, perhaps, with quite so much force.[2] Where there is a grant of exclusive jurisdiction over a general class of cases to a permanent judicial tribunal, it would seem to follow that as to the general class of cases the jurisdiction is so far general as to be of a superior nature, but, as we have elsewhere said, the overwhelming weight of authority is that the scope or extent of the jurisdiction is not the test, for that is the rank or dignity of the court. Where, however, exclusive jurisdiction is conferred upon a court, no matter what its rank, no other tribunal, however high its position, can share in that jurisdiction.[3] Concurrent jurisdiction exists where jurisdiction over a general subject or general class of cases is vested in two or more tribunals, so that with reference to that class or subject their authority is substantially the same. As the authority of courts possessing concurrent jurisdiction is of equal dignity, one of such courts can not control the other, nor interfere with the execution of its process.[4] Courts of concurrent jurisdiction are tribunals of co-ordinate powers, and, although as courts, each has a separate and distinct existence, they possess a common jurisdiction; that is, their general jurisdiction is in common but their particular jurisdiction, that is, jurisdiction

[1] Page *v.* Allen, 58 Pa. St. 338, S. C. 98 Am. Dec. 272; State *v.* Yancey, 121 Ind. 20; City of Evansville *v.* Blend, 118 Ind. 426.

[2] Macklot *v.* Davenport, 17 Ia. 379; Riggs *v.* Johnson County, 6 Wall. 166; Rossett *v.* State, 17 Ala. 496; Rex *v.* Robinson, 2 Burr, 799; Camden *v.* Allen, 26 N. J. L. 398; People *v.* Kelly, 38 Cal. 148, 151; United States *v.* Cornell, 2 Mason, 91; Smith *v.* Lockwood, 13 Barb. 209; Miller *v.* Miller, 44 Pa. St. 170, 172; Smith *v.* Stevens, 10 Wall. 321; New Haven *v.* Whitney, 36 Conn. 373; Aldrich *v.* Hawkins, 6 Blkf. 125; Chandler *v.* Hanna, 73 Ala. 390; Dodson *v.* Scroggs, 47 Mo. 285; Randle *v.* Williams, 18 Ark. 380. See, generally, Greene *v.* Mumford, 4 R. I. 313; Kimber *v.* Schuylkill County, 20 Pa. St. 366; Town of Ottawa *v.* Walker, 21 Ill. 605; State *v.* Danser, 3 Zabr. (N. J.) 552; Little *v.* Greenleaf, 7 Mass. 236.

[3] Wilson *v.* Mason, 3 Ark. 494; Arizona *v.* Mix, 1 Ariz. 52.

[4] *Ante*, § 193. *Post*, § 248.

of particular instances or cases, is distributed. When jurisdiction over a particular case or matter is once fully acquired, that jurisdiction is complete and exclusive, and covers the entire case or controversy as completely as if there were no courts of co-ordinate jurisdiction.

§ 238. **Jurisdiction of the general subject.**—We have in a great measure anticipated a discussion of the topic to which this paragraph is devoted, but this seemed unavoidable, and may, perhaps, be excused for the reason that there is almost impenetrable confusion and obscurity in the adjudged cases. The importance of the subject and the difficulty it presents make its consideration a perplexing task. The term "jurisdiction of the subject-matter of the action" is frequently employed, and it is often asserted that it means the subject of the particular instance or case.[1] We think the term "subject-matter" has a wider meaning than that usually assigned to it, and we also think that the term itself is not well chosen. We prefer the term "the general subject," inasmuch as it has a more comprehensive meaning than the term "the subject-matter." The term "the general subject" implies that it stands for a class or division, while the term "subject-matter" implies that there is only a single case or instance. The term "subject-matter" also implies that to constitute jurisdiction in the general sense there must be a concrete matter or case, whereas jurisdiction of the general subject is in the nature of an abstract right or power.[2] The subject, or general subject,

[1] Goodman *v.* Winter, 64 Ala. 410; Bell *v.* Craig, 52 Ala. 215; Pickens *v.* Yarbrough, 30 Ala. 408; Williamson *v.* Ross, 33 Ala. 509; McCorkle *v.* Rhea, 75 Ala. 213; Brownfield *v.* Weicht 9 Ind. 394; Franklin *v.* Satterfield (Del.), 19 Atl. R. 898; Ponce *v.* Underwood, 55 Ga. 601; Swiggart *v.* Harber, 4 Scam. (Ill.) 364, S. C. 39 Am. Dec. 418; Beverly *v.* Burke, 9 Ga. 440, S. C. 54 Am. Dec. 351; Eaton *v.* Badger, 33 N. H. 228; Wamsley *v.* Robinson, 28 La. Ann. 793; Gilliland *v.* Sellers, 2 Ohio St. 223; Block *v.* Henderson, 82 Ga. 23, S. C. 14 Am. St. R. 138; Burnley *v.* Cook, 13 Tex. 586, S. C. 65 Am. Dec. 79.

[2] In Yates *v.* Lansing, 5 Johns. 282, the court said: "By subject-matter is meant the abstract thing and not the particular case." The subject was well discussed in Holmes *v.* Holmes, 4 Lans. 388; it was held that jurisdiction of the subject-matter is not confined within

is the field over which the authority of the court extends, and while the court keeps within that field, it neither usurps authority nor does a thing it is without rightful power to do. Jurisdiction of the subject-matter is not confined to spots within the jurisdictional field, nor to parts of that field, but it extends to the whole field, however wide it may be. The court may, it is true, so exercise its authority as to render its proceedings erroneous, but so long as it keeps within the scope of its authority it acts within its jurisdiction. Jurisdiction of the general subject is authority over a general class of cases, no matter how numerous its members may be.[1] If it be found that the individual case before the court for judgment is a member of the class, then that case is within the jurisdiction of the general subject. There may, of course, be grounds for denying the right to proceed to judgment in such a case, or for affirming that the proceedings are void, but neither the denial nor the affirmation can be rested upon the ground that there is no jurisdiction of the general subject.

§ 239. **Jurisdiction of the particular subject.**—It is sometimes essential to the regularity and validity of a judgment that there should be jurisdiction of the particular thing or subject, but we do not believe that jurisdiction of the particular subject is always essential to the existence of jurisdiction of the general

the particular facts which must be shown before a court or judge to make out a specific and immediate cause of action. It is as extensive as the general or abstract question which falls within the power of the officer or tribunal to act concerning it. See, also, People *v.* Baker, 76 N.Y. 78; People, *ex rel.*, *v.* Hall, 80 N.Y. 117; Lange *v.* Benedict, 73 N. Y. 12; Groenvelt *v.* Burwell, 1 La. Rayn. 466, 467; State *v.* Wolever, 127 Ind. 306; Chicago, etc., Co. *v.* Sutton, 130 Ind. 405, 410; Jackson *v.* Smith, 120 Ind. 520; Perkins *v.* Hayward, 132 Ind. 95, 104; McCoy *v.* Able, 131 Ind. 417.

[1] Mr. Timothy Brown says: "Jurisdiction over the subject-matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the case pending, and not whether the particular case is one that presents a cause of action, or under the particular facts is triable by the court in which it is pending, because of some inherent facts which exist and may be developed during the trial." Brown on Jurisdiction, § 1 a.

subject. For the purpose of making our meaning clear, it is necessary to repeat the familiar rule that jurisdiction of the general subject can not be waived, inasmuch as it enables us to prove that jurisdiction of the particular subject is not the same thing as jurisdiction of the general subject, or, to employ the old phrase, the subject-matter. It is held by all the well-considered cases that jurisdiction of the particular subject may be waived. Thus, where there is general jurisdiction of actions of replevin, but it is required that the property in controversy should be in the county where the action is brought, a judgment is not void although rendered in a county different from that in which the property was when the action was commenced and judgment rendered.[1] Where the locality of the cause of action determines the jurisdiction the objection to jurisdiction, if not seasonably interposed, is deemed waived.[2] In the class of cases heretofore referred to, that is, where parties proceed in equity where the jurisdiction is in the law courts, a failure to seasonably and appropriately object is a waiver.[3] The En-

[1] Robinson *v.* Shatzley, 75 Ind. 461; Grand Rapids, etc., Co. *v.* Gray, 38 Mich. 461; Gott *v.* Brigham, 45 Mich. 424.

[2] Indianapolis, etc., Co. *v.* Solomon, 23 Ind. 534. In the case cited it was said: "But the want of jurisdiction because the action is local, and has been brought in the wrong county, and the want of jurisdiction because the court has no power and authority to adjudicate upon the *subject* involved in the action, are two very different things. In the latter case it was always and necessarily the rule of law that the consent of parties could not confer jurisdiction, for the reason that in any event the court was not by law deemed competent to be intrusted with the question, and therefore its proceedings were *coram non judice*, and utterly void, and the parties could not by agreement give faculties to the court which the law had withheld. But where the court was by law competent to entertain the question involved and was only deprived of jurisdiction because the action was local, and required to be brought in another county, it was always held that the objection could be waived. Tidd, 9th ed., 606; Co. Lit. 125 b, 126 a, note 1. Our code (§ 54), providing that the objection to the jurisdiction shall be deemed waived, unless taken by demurrer or answer, except where the court has no jurisdiction over the *subject*, was adopted in view of the common law, and changes the rule previously existing, which required the waiver of objection to the jurisdiction, on account of the venue, to appear of record affirmatively. 1 Chit. Pl. 268."

[3] Grandin *v.* Le Roy, 2 Paige Ch. 509; Le Roy *v.* Plate, 4 Paige Ch. 77; Truscott *v.* King, 6 N.Y. 147; Cox *v.* James, 45 N. Y. 557; Green *v.* Milbank, 3 Abb. New Cases, 138; Pam *v.* Vilmar, 54

glish courts, enforcing the distinction between jurisdiction of the particular subject and jurisdiction of the general subject, hold that consent may give jurisdiction in actions to recover possession of land brought in a county different from that in which the land lies.[1] In other cases it has been held that where there is general jurisdiction to order the sale of lands, but the jurisdiction is declared to be in the county where the land is situated, orders made by a court not sitting in such a county are not void.[2] Jurisdiction of the particular subject is authority in the concrete, whereas jurisdiction of the general subject is authority in the abstract, and jurisdiction in the abstract may exist although in the concrete particular facts may show that it can not be exercised. The contention that there is a concrete jurisdiction of a general nature asserts much the same fallacious doctrine as did the advocates of the doctrine of realism in their contests with the nominalists. It seems to us that jurisdiction in the abstract is essentially different from jurisdiction in the concrete, and if this be granted it must follow that there are two divisions of jurisdiction in which the subject is concerned, and that one of those divisions is jurisdiction of the particular subject.

§ 240. Distinction between jurisdiction of a general subject

How. Pr. 235; Buffalo, etc., Co. *v.* Delaware,etc.,Co.,130 N.Y.152, 29 N.E. R. 121; Amis *v.* Myers, 16 How. (U. S.), 492, 493; Bank of Utica *v.* Mersereau, 3 Barb. Ch. 528; Cummings *v.* Mayor, 11 Paige, 596; Creely *v.* Bay State, etc., Co., 103 Mass. 514; Sexton *v.* Pike, 13 Ark. 193; Parker *v.* Winipicogee Co., 2 Black (U. S.), 545, 551; Hipp *v.* Babin, 19 How. 271, 277, 278. *Ante*, § 229.

[1] Furnival *v.* Stringer, 1 Bing. N. C. 68; Andrewes *v.* Elliott, 6 E. & B. 338; Tyerman *v.* Smith, 6 E. & B. 719, 724; Lawrence *v.* Wilcock, 11 A. & E. 941; Vansittart *v.* Taylor, 4 E. & B. 910; Fineux *v.* Hovenden, Cro. Eliz. 664; Crow *v.* Edwards, Hobart [5 b]. But this doctrine is opposed by many cases. New Albany, etc., Co. *v.* Huff, 19 Ind. 444; Loeb *v.* Mathis, 37 Ind. 306; Ham *v.* Rogers, 6 Blckf. 559.

[2] Stark *v.* Ratcliff, 111 Ill. 75, 81; Ryan *v.* Jackson, 11 Tex. 391; Pinckney *v.* Hagerman, 4 Lans. 374; Blackmar *v.* Van Inwagen, 5 How. Pr. 367; Geller *v.* Hoyt, 7 How. Pr. 265. See, generally, Regina *v.* Bolton, 1 Ad. & E. (N. S.) 66, 72; Robinson *v.* Epping, 24 Fla. 237, S. C. 4 So. R. 812, 822; Arnold *v.* Arnold, 62 Ga. 627, 636; Murphy *v.* Creighton, 45 Iowa, 179; Gilchrist *v.* Williams, 1 B. Mon. 133; O'Conner *v.* Huggins, 113 N. Y. 511, S. C. 21 N. E. R. 184; Sullivan *v.* Fosdick, 10 Hun, 173, 180. But see, *contra*, Hopkins *v.* Meir (N. J. Eq.), 19 Atl. R. 264; Spencer *v.* Jennings, 114 Pa. St. 618, S. C. 8 Atl. R. 2.

and jurisdiction of the particular subject.—In the preceding paragraph we have endeavored to show that one species of jurisdiction is jurisdiction of the particular subject, and we shall now attempt to show the distinction between that species and the species we have ventured to call jurisdiction of the general subject. We suppose that jurisdiction of the general subject is so essentially different from jurisdiction of the person that at present we need do no more than barely advert to that difference, but it is important that we here allude to it, for the reason that it enables us to direct attention to the fact that where there is general jurisdiction of the subject and jurisdiction of the person there exists authority to adjudicate as to the jurisdiction of the particular subject. These two elements being present the court has rightful authority to proceed, and if it has such authority there is jurisdiction, so that incidental or minor matters may, in the absence of objections, be adjudicated. Thus, in the class of cases cited in the note to the preceding paragraph the court having jurisdiction over the general subject has authority to decide whether there are assets of the estate in the county, for the existence of assets is the particular subject and the matter of decedents' estates the general subject.[1] An objection that there is no jurisdiction of the general subject goes to the competency of the court to act at all and denies its authority to proceed in the cause, whereas, an objection that there is no jurisdiction of the particular subject only

[1] The general doctrine of the text is asserted in the cases which hold that jurisdiction to determine whether there are assets in the county is so far jurisdiction that the proceedings can not be assailed in a collateral proceeding. Calloway *v.* Cooley (Kan.), 32 Pac. R. 372, citing, Stanly *v.* Morse, 26 Iowa, 454; Roberts *v.* Flannagan, 21 Neb. 503, 32 N. W. R. 563; Loring *v.* Arnold, 15 R. I. 428, 8 Atl. 335; *In re.* Shoenberger's Est., 139 Pa. St. 132, 20 Atl. R. 1050; Goldtree *v.* McAllister, 68 Cal. 93, 23 Pac. R. 207; Dickey *v.* Vann, 81 Ala. 425, 8 So. R. 195; Holmes *v.* Railroad Company, 9 Fed. R. 229; Howbert *v.* Heyle, 47 Kan. 58, S. C. 27 Pac. R. 116; Higgins *v.* Reed, 48 Kan. 272, S. C. 29 Pac. R. 389. See, generally, Broderick's Will, 21 Wall. 503; State *v.* McGlynn, 20 Cal. 233, 268; Hegarty's Appeal, 75 Pa. St. 503, 513; Hilliard *v.* Binford, 10 Ala. 977, 983; Winslow *v.* Donnelly, 119 Ind. 565; Robertson *v.* Pickrell, 109 U. S. 608; Harris *v.* Harris, 61 Ind. 117; *In re* Matter of the Will of Warfield, 22 Cal. 51, S. C. 83 Am. Dec. 49.

challenges the authority of the tribunal to assume control over the particular subject of the special case or controversy. In the one class, the denial is general and sweeping inasmuch as it is an assertion that there is no authority over the general class of cases to which the particular case belongs, whereas a denial of jurisdiction of a particular subject impliedly concedes the existence of jurisdiction of the general class, but asserts that for some cause peculiar to the special instance there is no jurisdiction of the particular subject. It can not be justly affirmed that there is no court where there is jurisdiction of a general class of cases, but this may be justly affirmed where there is no such jurisdiction, for as to a matter over which there is an entire absence of authority it is as if there were no court. It is strictly correct, therefore, to affirm that where there is no authority over the general class of cases the proceedings are *coram non judice*. Where, however, there is such authority it can not be justly asserted, since there is a court in all that the term implies, but as to the particular subject the court is not authorized to act. As illustrating the difference between jurisdiction of a general subject and jurisdiction of a particular subject, reference may be had to those cases wherein it is adjudged that the grant of letters of administration to a person not eligible to appointment is not void,[1] for in all such

[1] Fisher *v.* Bassett, 9 Leigh. 119, S. C. 33 Am. Dec. 227; Burnley's Representative *v.* Duke, 2 Rob. (Va.) 102; Carter's Heirs *v.* Cutting, 8 Cranch, 251; Schultz *v.* Schultz, 10 Gratt. 358, S. C. 60 Am. Dec. 335. In Fisher *v.* Bassett, Judge Tucker said: "But where the court has jurisdiction of cases, *ejusdem generis*, its judgment in any case is not void, because its validity can not appear without an inquiry into the facts, an inquiry which the court itself must be presumed to have made, and which will not be permitted to be reviewed collaterally." The learned judge cites as sustaining his views the case of Prigg *v.* Adams, 2 Salk. 674. Judges Parker and Allen also gave opinions in Fisher *v.* Bassett, and it was said by the former: "The distinction between the acts of a court having jurisdiction over the subject-matter under some circumstances, and those of one which, in no possible state of things, can take jurisdiction over the subject, is a sound and sufficiently intelligible one to guide our judgments in the present case. If under any circumstances the hustings court could grant administration to Scott, it had jurisdiction of the subject, and must judge of those circumstances. If it erred in determining that the facts upon which its power

cases the principle upon which the distinction rests is declared and enforced. The principle enforced is that where there is authority to make a judicial inquiry there is jurisdiction, and it is evident that this authority exists wherever there is power over a general class of cases. The authority exercised in determining whether a person can be an administrator in a State where certain persons are absolutely forbidden from acting in that capacity is not, in principle or essence, different from an inquiry into the right of the court to assume authority over a thing or subject involved in a particular case having the general characteristics or features of a member of a general class of cases. The object of investing courts with jurisdiction of a general class is to enable them to investigate and determine all controversies arising in cases of the class, and to accomplish this object it is necessary that the court should have power to inquire whether the particular subject is such as may be considered as appertaining to any case of the general class. "Where the end is conceded, the means of arriving at it are granted," and it must be conceded that where there is jurisdiction of a general subject there is authority to inquire as to whether a particular subject falls within the general range of the

to grant administration in the particular case depended were proved, it was an error to be corrected by some competent authority; but until so corrected, it conferred upon Scott all the powers of a rightful administrator." The latter said: "Whether the particular state of facts existed which would have authorized the court to grant administration originally, was a matter to be inquired into and decided by the court, and the decision, if erroneous, would be voidable only, and not void." Much to the same effect is the language of the court in Schultz *v.* Schultz, *supra*, where it was said by the court: "And as the court had a general jurisdiction over cases *ejusdem generis*, under certain circumstances, it must be taken for granted that the court did make inquiry and did judge of those circumstances, so that the question of jurisdiction entered into and became an essential part of the judgment of the court, and if it erred in its judgment in this respect or otherwise, the error was one which must be corrected by some competent authority upon a proper proceeding. The judgment can not be held void *ipso facto*, because an inquiry is necessary to ascertain its invalidity; and this inquiry will not be permitted to be made collaterally; and being voidable only and not void, it must remain in full force and effect as evidence or otherwise until reversed or in some way annulled by a proper proceeding."

major subject.[1] Another class of cases is illustrative of the general doctrine and that is the class in which upon a change of venue the case is sent to a court different from the one to which the statute directs the case to be sent, for, if there is general jurisdiction of the subject and jurisdiction is assumed, the judgment of the court to which the case is transmitted is not void.[2] The doctrine which we advocate is not opposed to those cases which hold that where a court can not make a record there is no jurisdiction,[3] for where there is authority over a general class of cases a record may be made, although it may be an erroneous one. But we do not believe the doctrine so broadly asserted by some of the cases is sound.[4] The authority to make a record in any one of a general class may, perhaps, be regarded as a test of jurisdiction, but we do not believe that authority to make a record in a special or particular member of a general class is a test. If, to illustrate, a court having only criminal jurisdiction should assume by an assertion of power, to make a record in a civil case, then the record no matter what it contained would be entirely destitute of force for the reason that it was one that the court could not make in any case belonging to the general class of cases called civil, since

[1] Mr. Brown suggests the distinction we are here attempting to point out. He says: "But the subject-matter of the controversy does not relate to the particular case before the court, but whether the court has power to try an issue involving the same subject, as in an indictment for murder alleged to have been committed in 'A' county, the court having general criminal jurisdiction to try it; and if the evidence showed the crime was committed in 'B' county, this would be a failure of proof of the allegation of venue, but not a question that could be raised by *habeas corpus* before the trial or after, but should be raised on appeal." Brown on Jurisdiction, § 10.

[2] Coleman *v.* Floyd, 131 Ind. 330

[3] Starbuck *v.* Murray, 5 Wend. 148.

[4] Roberts *v.* Caldwell, 5 Dana, 512; Eitel *v.* Foote, 39 Cal. 439; Harnish *v.* Bramer, 71 Cal. 155, S.C. 11 Pac. R. 888; Bridgeport Savings Bank *v.* Eldredge, 28 Conn. 556, 562, S.C. 73 Am. Dec. 688; Osgood *v.* Blackmore, 59 Ill. 261; Rumfelt *v.* O'Brien, 57 Mo. 569; Lingo *v.* Binford (Mo.), 18 S.W. R. 1081; Harris *v.* McClanahan, 79 Tenn. (11 Lea), 181; Letney *v.* Marshall, 79 Tex. 513, S. C. 15 S.W. R. 586; Marrow *v.* Brinkley, 85 Va. 55, S. C. 6 S. E. R. 605; Doe *v.* State Bank, 4 McLean (U. S. C. C.), 339; Colt *v.* Colt, 48 Fed. R. 385. But see, Adams *v.* Saratoga, etc., Co., 10 N. Y. 328; Ferguson *v.* Crawford, 70 N.Y. 253; Pollard *v.* Wagener, 13 Wis. 569, 573; Goudy *v.* Hall, 30 Ill. 109.

of no one of such cases could it possibly have jurisdiction. If a court having general jurisdiction of a class of actions should make a record in any one of that class the record could not be justly said to be made without power although it might be true that there was a wrongful exercise of authority in the particular instance.[1] The assertion of authority need not be regular or its exercise rightful in order to give jurisdiction and warrant the making of an effective record in the particular instance, but it is sufficient if there is authority to move in the general class of cases, for, if there is authority, no matter how irregular the movement or how erroneous the procedure, there is such jurisdiction as will render a judgment effective as against a collateral assault. In other words the judgment will not be void although it may be voidable. If, for instance, the court has authority to determine all matters relating to the sale of decedents' land, but can order a sale only where there are no personal assets, its judgment is not void, although there were in fact personal assets.[2] In such a case, as in others already cited, the jurisdiction of the general class gives authority to decide whether it can be exercised over the particular subject.

§ 241. **Equity jurisdiction.** — Equity jurisdiction may be

[1] It may not be amiss to here repeat what was said in the opening of this paragraph. We assume in our discussion that there is jurisdiction of the person, for, if there is not jurisdiction of the person, and that fact appears, much that we have said would not be correct. But upon the assumption that there is jurisdiction of the person we think it clear that it is not necessary as a general rule that the record should show jurisdiction of the particular subject.

[2] Atkins *v.* Kinnan, 20 Wend. 241, S. C. 32 Am. Dec. 534; Jackson *v.* Robinson, 4 Wend. 436; Jackson *v.* Crawfords, 12 Wend. 533; Brown *v.* Cocking, L. R., 3 Q. B. 672, 675. We venture to say that one great cause of error is the confounding of a *right decision* on a jurisdictional question with the *right to decide*. If there is authority to decide then, no matter what the character of the decision may be, there is jurisdiction. A *right to decide* is all that is essential to jurisdiction, but a *right decision* is essential to the validity of the proceedings when appropriately assailed by a direct attack. Given a right or opportunity to defend and authority over a general class, there is always jurisdiction of a particular member of the class, but that jurisdiction may be so exercised as to make the proceedings voidable. This doctrine may, doubtless, be modified by an explicit and positive statute, but in the absence of a statute we think it is the only doctrine that can be sustained on principle.

roughly defined to be the field over which the authority of the courts of equity extends.[1] This definition, although it makes no pretensions to strict accuracy or exactness, is sufficient for our purpose. All courts, whether of law or equity, act within general or specific limitations, and these limitations are, it may not be too bold to say, the fences which enclose or mark the boundaries of their jurisdictional domain. As is true of law jurisdiction, the jurisdiction of equity is determined by a decision of the question whether the particular case in which the court is asked to pronounce a decree is a member of a general class over which the courts of equity have authority. Whether relief shall be granted or denied in a particular instance is not the test of jurisdiction.[2] Thus, if a bill is filed asking the foreclosure of a mortgage the equitable jurisdiction is invoked and is not affected by any consideration relating solely to the merits of the particular controversy. In the preceding paragraph we cited many cases asserting that where equity assumes jurisdiction, although wrongfully, the decree is not void.[3] If objection is properly pressed such a decree may be avoided on appeal, but it is not vulnerable upon a collateral attack. This rule applies even where the bill on its

[1] The term "equity jurisdiction" is used as signifying the authority of courts of equity, and is generally employed for the purpose of distinguishing the general authority of such courts from that conferred upon courts of law.

[2] Prof. Tiedeman says: "If a party applies to a court of equity for a specific performance of a contract, or its cancellation or rescission, the fact that the party asks for that peculiar kind of relief, which can be granted by a court of equity alone, at once determines the fact that the case falls within the jurisdiction of the court of equity. But whether the relief shall be granted in that particular case or not is not a question involved in the inquiry into the equity jurisdiction, but it is a question of equity jurisprudence, and the court may conclude in that particular case that the relief shall be denied because the facts of the case do not come within the limitations of the principles of equity which control the extent to which the relief asked for shall be granted, without, at the same time, reaching the conclusion that the case does not come within the jurisdiction of the court of equity." Tiedeman Eq. Jur., § 7. See, also, 1 Pomeroy Eq. Jur., § 129.

[3] See, also, Mellen *v.* Moline Iron Works, 131 U. S. 352, 367; Kilbourn *v.* Sunderland, 130 U. S. 505, 514; Reynes *v.* Dumont, 130 U. S. 354.

face shows that there is an adequate remedy at law.[1] Where the jurisdiction is in equity a decree is as effective as is a judgment of a law tribunal in a matter of which it has jurisdiction.[2] In those States in which the statute blends the law and equity jurisdiction and provides for one form of action to be prosecuted in one court or one class of courts the question of whether the cause is of law or equity cognizance can not, so far as concerns the question of jurisdiction or no jurisdiction, be of much, if any, practical importance. We do not mean to affirm that even in those States the difference between matters of equitable and matters of legal cognizance is unimportant; on the contrary, we believe that the distinction is one of importance. It is not important because it materially affects the question of jurisdiction, but because it affects the remedy.[3] If a party mistakes his remedy, as, for example, sues for injunction where his whole right rests upon a breach of contract caused by a simple failure to perform, he will fail, if objection is opportunely made.[4] His failure to recover will not, however, be for

[1] Goodman *v.* Winter, 64 Ala. 410, 432.

[2] Faught *v.* Faught, 98 Ind. 470; Sibbald's Case, 12 Pet. 492; White *v.* Bank of United States, 6 Ohio, 529; Magwire *v.* Tyler, 40 Mo. 406; McDonald *v.* Mobile, etc., Co., 65 Ala. 358; Denver *v.* Lobenstein, 3 Colo. 216; Baldwin *v.* McCrea, 38 Ga. 650; Western, etc., Co. *v.* Virginia, etc., Co., 10 W. Va. 250; Moody *v.* Harper, 38 Miss. 599; Cowan *v.* Wheeler, 25 Me. 267, S. C. 43 Am. Dec. 283; McCampbell *v.* McCampbell, 5 Litt. 92, S. C. 15 Am. Dec. 48.

[3] In Meyers *v.* Field, 37 Mo. 434, 441, it was said: "The distinction between law and equity has not been abolished by the new code of practice. Equitable rights are still to be determined according to the doctrine of equity jurisprudence and in the peculiar modes which are sometimes required in such cases, and legal rights are to be ascertained and adjudged upon principles of law; and the rules of proceeding at law are in many respects very different from those which are applied to equity cases. Pleadings should be drawn up with reference to these distinctions, though in the form prescribed by statute. Where the petition is framed for legal redress, the plaintiff can not be allowed to prove his equitable rights, though the facts be stated to some extent in his petition. If he seeks equitable relief the facts must be stated in such manner as to show that he is entitled to the relief prayed for under the former practice; if he claims redress at law the essential elements of his cause of action must be stated with reasonable certainty and clearness." See Neiser *v.* Thomas, 99 Mo. 224.

[4] Bass *v.* City of Fort Wayne, 121 Ind. 389; Smith *v.* Goodknight, 121 Ind. 312; Miller *v.* City of Indianapolis, 123 Ind. 196; Kyle *v.* Frost, 29

the reason that the court has no jurisdiction, but for the reason that the remedy selected is not the appropriate one. In some of the cases there is a confounding of a mistake of the remedy with an absence of jurisdiction. It is true, of course, that where the law expressly gives to a court, or class of courts, jurisdiction of equitable cases only, it can not take jurisdiction of a case belonging to a class of an entirely and radically different character, as, for example, of an action to enforce a penal statute.

§ 242. **Law jurisdiction.**—The jurisdiction of the courts of chancery was anciently regarded as "the extraordinary jurisdiction," and that of the courts of law as the ordinary jurisdiction. It is still true that the courts of law are those of ordinary jurisdiction and that where a right is created and no provision made for its enforcement, jurisdiction will fall to the courts of law unless the case is one legitimately belonging to the courts of equity jurisdiction. But the jurisdiction of courts of equity is now so well defined by precedent and practice that where a right is created requiring for its enforcement the machinery of a court of equity it will be held that the case is one of equity cognizance, but where there is no equitable feature impressed upon the case by the statute by which it was created it will fall to the court of ordinary jurisdiction.[1] Where, as is well known, a new right is created and a specific remedy provided for its enforcement that remedy must be pursued.

§ 243. **Jurisdiction in rem.**—A judicial proceeding against property or against a thing is a proceeding *in rem*, but there are proceedings *in rem* which are not in the true sense pro-

Ind. 382; Dixon *v.* Caldwell, 15 Ohio St. 412, 415.

[1] Fitch *v.* Creighton, 24 How. (U. S.) 159; Cummings *v.* National Bank, 101 U. S. 153, 157; Neves *v.* Scott, 13 How. (U. S.) 268, 271; Gaines *v.* Fuentes, 92 U. S. 10; Ellis *v.* Davis, 109 U. S. 485; Lorman *v.* Clarke, 2 McLean (U. S. C. C.), 568, 577; Clark *v.* Smith, 13 Pet. 195; Holland *v.* Challen, 110 U. S. 15; Reynolds *v.* Crawfordsville, etc., Bank, 112 U. S. 405; Orvis *v.* Powell, 98 U. S. 176, 178; Brine *v.* Ins. Co., 96 U. S. 627; Borland *v.* Haven, 37 Fed. R. 394.

ceedings against the *res*.[1] It is true that such proceedings af-

[1] In the case of Cross *v.* Armstrong, 44 Ohio St.613, the court thus described a proceeding *in rem*: "*In rem* is understood to be a technical term taken from the Roman law, and there used to distinguish an action against the thing from one against the person, the terms *in rem* and *in personam* always being the opposite, one of the other; an act *in personam* being one done or directed against a specific person, while an act *in rem* was one done with reference to no specific person, but against or with reference to a specific thing, and so against whom it might concern, or 'all the world'; a proceeding brought to determine the *status* of the thing itself, the particular thing, and which is confined to the subject-matter *in specie*, is *in rem*, the judgment being intended to determine the state or condition, and *ipso facto*, to render the thing what the judgment declares it to be; while a proceeding which seeks the recovery of a personal judgment is *in personam*. In the former, process may be served on the thing itself, and by such service and making proclamation the court is authorized to decide upon it without other notice to persons, all the world being parties; while in the latter, in order to give the court power to adjudge, there must be service upon those whose rights are sought to be affected. As regards rights, the terms signify the antithesis of 'available against a particular person,' and 'available against the world at large.' Thus, *jura in personam* are rights primarily available against specific persons, *jura in rem* rights only available against the world at large. Beyond this, a judgment or decree is *in rem*, or in the nature of a judgment *in rem*, when it binds third persons—such as the sentence of a court of admiralty on a question of prize, or a decree of other courts upon the personal status or relation of the party, such as dissolution of marriage contract, bastardy, etc., a decree in probate court admitting a will to probate and record, granting administration, etc., or a decree of a court of a foreign country as to the status of a person domiciled there." Mr. Freeman says: "But perhaps the most correct as well as the most concise definition anywhere given of a judgment *in rem* is that to be found in Smith's Leading Cases, viz.: that, 'it is an adjudication upon the status of some particular subject-matter, by a tribunal having competent authority for that purpose,' depending for its effect on this principle, that it is 'a solemn declaration proceeding from an accredited quarter concerning the *status* of the thing adjudicated upon, which *very declaration operates accordingly upon the status of the thing adjudicated upon*, and *ipso facto* renders it such as it is thereby declared to be.'" Freeman on Judgments, § 606. The author refers to the following authorities: 2 Smith's Lead.Cas. 585, 586(6th Am. ed.), 660; State *v.* Central Pac. R. R. Co., 10 Nev. 47; Lord *v.* Chadbourne, 42 Me. 429, S. C. 66 Am. Dec. 290. See, also, McLaughlin *v.* McCrory, 55 Ark. 442, S. C. 29 Am. St. 56; The Palmyra, 12 Wheat. 1; United States *v.* Brig Malek Adhel, 2 How. 210; Freeman *v.* Alderson, 119 U. S. 185; Pennoyer *v.* Neff, 95 U. S. 714; Grignon's Lessee *v.* Astor, 2 How. (U. S.) 319; Brigham *v.* Fayerweather, 140 Mass. 413, 414; Arndt *v.* Griggs, 134 U. S. 316; Jones *v.* Fletcher, 42 Ark. 422. See, generally, Carpenter *v.* Strange, 141 U. S. 87; Davis *v.* Headly, 22 N. J. Eq. 115; Cooley *v.* Scarlett,

fect the *status* of persons as well as of things, but it will not be safe to say, as is sometimes done, that proceedings *in rem* are proceedings affecting the *status* of persons and things, since such a definition would be entirely too comprehensive inasmuch as it would include all classes of suits and actions, for the judgment or decree of a court necessarily affects the *status* of persons. Thus, for example, a judgment in an ordinary action of assumpsit adjudges that the *status* of the one party is that of creditor and of the other that of debtor, but no one would think of calling such an action a proceeding *in rem*. A prominent characteristic of a proceeding *in rem* is that it is effective as against all persons, or as was said by the Supreme Court of the United States in an early case, it is effective against all the world. This is true of all classes of proceedings *in rem*, as well of those called *quasi* proceedings *in rem* as of those which are strictly *in rem*. A proceeding in attachment is generally regarded as a *quasi* proceeding *in rem*, but it is quite difficult under the present condition of the authorities, to affirm that this statutory proceeding is *in rem*, for in many respects it is a proceeding *in personam*. It certainly can not be regarded as strictly *in rem*, for the rights of the person are often involved, and it is, at most, an ancillary proceeding, but withal, a proceeding in which the adjudication settles the *status* of the property seized under the writ. Where the debtor is a non-resident of the State it is the seizure of the property that gives jurisdiction and constructive notice is sufficient, but such notice will not authorize a personal judgment.[1] A proceeding in attachment differs essentially from a strict proceeding *in rem* inasmuch as in such a proceeding there is no personal defendant, whereas in an attachment proceeding if there is actual service of notice or an appearance a personal judgment may be rendered although it may be far in excess of the value of the

38 Ill. 316, S. C. 87 Am. Dec. 298; Burnley *v.* Stevenson, 24 Ohio St. 474, S. C. 15 Am. R. 621; Quarls *v.* Abbett, 102 Ind. 233.

[1] Cooper *v.* Reynolds, 10 Wall. 308; Robinson *v.* National Bank of Newberne, 81 N. Y. 385; People *v.* Baker, 76 N. Y. 78; Casey *v.* Adams, 102 U. S. 66; Kilbourn *v.* Woodworth, 5 Johns. 37; Gates *v.* Bennett, 33 Ark. 475.

property seized.[1] Where there is actual service or an appearance a proceeding in attachment would seem to be a double one, that is, *in personam* as well as *in rem*, but where there is neither an appearance nor actual service it seems that the proceeding is *in rem* and the extent of the jurisdiction dependent upon the property seized. In so far as concerns the attachment proceedings the seizure of the property is the essential requisite to jurisdiction, but it is held by some of the courts that seizure is not of itself sufficient to confer jurisdiction; this doctrine is, however, not accepted by the Supreme Court of the United States.[2] We can see no reason for doubting the soundness of the conclusion reached by that great court, for the seizure of the property gives authority to adjudicate as to that property and there is, therefore, jurisdicton of the particular subject as well as of the general class of cases, so that there is not such an absence of jurisdiction as makes the pro-

[1] Under the decision of the court in Bardwell *v.* Collins, 44 Minn. 97, S. C. 20 Am. St. R. 547, granting the soundness of that decision, it is doubtful whether proceedings would be valid where there is no service of notice upon a resident of the State, even though a statute assumed to dispense with notice. It seems to follow, as a necessity, from the reasoning in that case, that wherever the defendant is a resident there must be actual legal notice although property may be the subject of the suit or action.

[2] In Cooper *v.* Reynolds, 10 Wall. 308, 319, the court said: "Now, in this class of cases on what does the jurisdiction of the court depend? It seems to us that the seizure of the property, or that which in this case is the same in effect, the levy of the writ of attachment on it, is the one essential requisite to jurisdiction, as it unquestionably is in proceedings purely *in rem*. Without this the court can proceed no further; with it the court can proceed to subject that property to the demand of the plaintiff. If the writ of attachment is the lawful writ of the court, issued in proper form under the seal of the court, and if it is by the proper officer levied upon property liable to the attachment, when such writ is returned into court, the power of the court over the *res* is established." In reference to the publication of notice the court said: "So, also, of the publication of notice. It is the duty of the court to order such publication, and to see that it has been properly made, and undoubtedly, if there has been no such publication, a court of errors might reverse the judgment. But when the writ has been issued, the property seized, and that property been condemned and sold, we can not hold that the court had no jurisdiction for want of a sufficient publication of notice."

ceedings utterly void. Another class of cases, and a very large one, in which jurisdiction is *quasi in rem*, is that usually denominated "probate matters." In probate matters the estate is regarded as the *res*, and the proceedings are, therefore, in the nature of proceedings *in rem*.[1] For the reason that they partake of the nature of proceedings *in rem* they are usually held to be effective against all persons. Where a sale is ordered of real property by a court of competent jurisdiction in the exercise of its probate authority the proceedings are regarded by some of the courts as *in rem*,[2] but by other courts a different view is taken.[3] If the proceeding is *in rem* then under the doctrine of the court in the case from which we have quoted,[4] it would seem to follow that a sale is not void although notice may not have been given, but upon this question the authorities are in sharp conflict.[5] There is another class of

[1] Gaines *v.* Firentes, 92 U. S. 10; Ennis *v.* Smith, 14 How. 400; Archer *v.* Mosse, 2 Vern. 8; Holliday *v.* Ward, 19 Pa. St. 485; Schultz *v.* Schultz, 10 Gratt. 358, S. C. 60 Am. Dec. 335; Norvell *v.* Lessueur, 33 Gratt. 222; Steele *v.* Renn, 50 Texas, 467, S. C. 32 Am. Rep. 605; Moore *v.* Tanner, 5 T. B. Monroe, 42, S. C. 17 Am. Dec. 35; Cecil *v.* Cecil, 19 Md. 72, S. C. 81 Am. Dec. 626; Patton *v.* Allison, 7 Humph. 320; Brown *v.* Brown, 86 Tenn. 277; Miller *v.* Foster, 76 Texas, 479; Vanderpoell *v.* Van Valkenburg, 6 N. Y. 190; Cotton *v.* Ross, 2 Paige, 396, S. C. 22 Am. Dec. 648; State *v.* McGlynn, 20 Cal. 233, S. C. 81 Am. Dec. 118; Whicker *v.* Hume, 7 H. L. Cases, 124.

[2] Smith *v.* Smith, 13 Gray, 209; Hood *v.* Hood, 110 Mass. 463; Perry *v.* Meldowcroft, 10 Beav. 122; Bunting's Case, 4 Coke, 29; Kenn's Case, 7 Coke, 138; Smith's Leading Cases (6th Am. ed.), 670.

[3] See note 5.

[4] Cooper *v.* Reynolds, 10 Wall. 308.

[5] In the case of Good *v.* Norley, 28 Iowa, 188, Judge Dillon gave the general subject a very able and careful consideration. He indicated that his opinion was that lack of notice did not render the proceedings void. In the subsequent cases of Washburn *v.* Carmichael, 32 Iowa, 487; Boyles *v.* Boyles, 37 Iowa, 592, and Shawhan *v.* Loffer, 24 Iowa, 217, the court repudiated the views of Judge Dillon. That able judge, in support of his position, cited Grignon's Lessee *v.* Astor, 2 How. (U. S.) 319; McPherson *v.* Cunliff, 11 S. & R. (Pa.) 422; Saltonstall *v.* Riley, 28 Ala. 164; Wilkinson *v.* Leland, 2 Pet. 627; Sheldon *v.* Newton, 3 Ohio St. 494; Benson *v.* Cilley, 8 Ohio St. 604; Howard *v.* Moore, 2 Mich. 226; Coon *v.* Fry, 6 Mich. 506; Doe *v.* Harvey, 5 Blackf. 487; Thompson *v.* Doe, 8 Blackf. 336; Norton *v.* Norton, 5 Cush. 524. As opposing his view he cited: Babbitt *v.* Doe, 4 Ind. 355; Doe *v.* Anderson, 5 Ind. 33; Doe *v.* Bowen, 8 Ind. 197; Gibbs *v.* Shaw, 17 Wis. 197; French *v.* Hoyt, 6 N. H. 370.

cases, and its members are very numerous, which are usually considered as *quasi* proceedings *in rem*. We refer to the class of cases wherein the relief sought is the enforcement of a lien against property. Such proceedings are said to be against a thing indebted. A proceeding against a thing indebted generally rests upon a lien, and, for our present purpose, it is sufficient to say that a lien is the right in a thing correspondent to the amount of the debt due from the owner of the thing to the creditor. To the extent of the lien the creditor has a sort of limited estate in the property so that the right asserted in seeking an enforcement of the lien is against the property or thing. A proceeding to enforce a lien, while it is in the nature of a proceeding *in rem*, is not strictly such a proceeding, for in such a case there must be some notice to the person. The States have very comprehensive powers respecting the enforcement of liens upon property within their borders,[1] but it is the better opinion that such a lien can not be enforced without actual or constructive notice to the property owners. The foreclosure of liens is the exercise of equity jurisdiction inasmuch as equity acts specifically and not by way of compensation, so

[1] In the case of Arndt *v.* Griggs, 134 U. S. 316, S. C. 10 Sup. Ct. R. 557, the court exhaustively reviewed the authorities upon the general question, and, among other things, said: "These various decisions of this court establish that, in its judgment, a State has power by statute to provide for the adjudication of titles to real estate within its limits as against non-residents who are brought into court only by publication; and that is all that is necessary to sustain the validity of the decree in question in this case." The court, as sustaining its view, cited the following authorities: Holland *v.* Challen, 110 U. S. 15; Hart *v.* Sansom, 110 U. S. 151; United States *v.* Fox, 94 U. S. 315, 320; McCormick *v.* Sullivant, 10 Wheat. 192; Beauregard *v.* New Orleans, 18 How. 497; Suydam *v.* Williamson, 24 How. 427; Christian Union *v.* Yount, 101 U. S. 352; Lathrop *v.* Bank, 8 Dana, 114; Cloyd *v.* Trotter, 118 Ill. 391; Adams *v.* Cowles, 95 Mo. 501; Wunstel *v.* Landry, 39 La. Ann. 312; Essig *v.* Lower, 120 Ind. 239, S. C. 21 N. E. R. 1090; Dillon *v.* Heller, 39 Kan. 599; Beebe *v.* Doster, 36 Kan. 666, 675, S. C. 14 Pac. Rep. 150; Gillespie *v.* Thomas, 23 Kan. 138; Walkenhorst *v.* Lewis, 24 Kan. 420; Rowe *v.* Palmer, 29 Kan. 337; Venable *v.* Dutch, 37 Kan. 515, 519, S. C. 15 Pac. Rep. 520; Boswell's Lessee *v.* Otis, 9 How. 336; Parker *v.* Overman, 18 How. 137; Clark *v.* Smith, 13 Pet. 195; Pennoyer *v.* Neff, 95 U. S. 714; Huling *v.* Railway Co., 130 U. S. 559, S. C. 9 Sup. Ct. Rep. 603; Mellen *v.* Iron Works, 131 U. S. 352, S. C. 9 Sup. Ct. Rep. 781.

that it would seem that where jurisdiction is asserted against property indebted and there is no actual or manual seizure, there must be some notice, either actual or constructive. The well known maxim that equity acts upon the person requires that notice should be given since without notice there is no personal defendant in court. This rule can not, however, apply where the jurisdiction is purely *in rem*, for, as we shall presently see, such proceedings are directly against the thing and hence it is not necessary that there should be any personal defendant present. It has been held by a very able court that a statute assuming to confer jurisdiction to decree the foreclosure of mortgages in suits against residents of the State upon notice by publication is unconstitutional.[1] There is, as we have already indicated, conflict upon the question whether seizure is of itself sufficient notice; some of the cases declare that an effective seizure is notice,[2] and this it seems to us is the sound doctrine where there is an actual and complete seizure of the thing, for such an act is notice as full and effective as can well be given, but where there is no actual seizure it seems to us that the rule must be otherwise. We are not now referring to cases where the statute authorizing proceedings *in rem* or *quasi*

[1] Bardwell *v.* Collins, 44 Minn. 97, S. C. 29 Am. St. R. 547. In the course of the opinion in that case the court said: "It is, in our judgment, beyond the power of the legislature to disregard so fundamental and long-established a principle of our jurisprudence. Service by publication, under such circumstances, is not due process of law, and therefore any statute assuming to authorize it is unconstitutional. It would be of little use to cite authorities upon a subject which has been so much and so often discussed in its many phases, as each case must be determined upon its own facts, and hence the decided cases would ordinarily be in point only by way of analogy." See Burnam *v.* Commonwealth, 1 Duv. 210; Henderson *v.* Staniford, 105 Mass. 504; Morrison *v.* Underwood, 5 Cush. 52; Hurlbut *v.* Thomas, 55 Conn. 181, S. C. 3 Am. St. R. 43; Happy *v.* Mosher, 48 N. Y. 313; Rockwell *v.* Nearing, 35 N.Y. 302; Beard *v.* Beard, 21 Ind. 321; Orcutt *v.* Ranney, 10 Cush. 183.

[2] New Orleans *v.* Hemphill, 35 Miss. 17; Stewart *v.* Board, etc., 25 Miss. 479; Hollingsworth *v.* Barbour, 4 Pet. 466; Kealing *v.* Spink, 3 Ohio St. 105; Thompson *v.* Steamboat Morton, 2 Ohio St. 26; Bradstreet *v.* The Neptune Co., 3 Sumn. 600; Schooner Bolina, etc., 1 Gal. (U. S. C. C.) 75; The Mary, 9 Cranch, 126; Nations *v.* Johnson, 24 How. 195; Gray *v.* Kimball, 42 Me. 299, 307.

proceedings *in rem* expressly requires notice and makes it jurisdictional, but to cases where the question is not affected or controlled by statute, for we think that there is an essential difference between cases where there is a statute expressly making notice by publication or by personal service essential to jurisdiction and cases where there is no statute bearing upon the subject. Notice by publication is not sufficient to confer jurisdiction of the person, for, theoretically at least, there are no personal defendants to proceedings strictly *in rem*.[1] Where the proceedings are against the property, that is, are proceedings *in rem* in the narrow and strict sense of the term, possession actual or constructive is essential to the existence of jurisdiction.[2] If jurisdiction is once fully acquired a removal would not, it is held, divert it, although the removal was made under color of authority,[3] but a seizure voluntarily abandoned by the government or by a party having authority to abandon puts an end to the authority over the property seized.[4] If a substitute for the property is provided jurisdiction remains, as, for example, where a bond is executed which secures the release of the property from the actual or constructive possession of the court.[5] It is manifest that if a party could oust jurisdiction by executing a bond great injustice would result, especially in attachment proceedings, or other *quasi* proceedings *in rem*. The doctrine of the responsibility of things is founded in great part on a pure legal fiction,[6] and proceeding on this fiction there are said to be three classes of things: 1. Things guilty. 2. Things hostile. 3. Things indebted. It is obvious that

[1] Belcher *v.* Chamber, 53 Cal. 635; Billings *v.* Kothe, 49 Iowa, 34; Walker *v.* Day, 8 Baxter, 77; Mercantile Trust Co. *v.* Railroad, 16 Blatchf. 324.

[2] United States *v.* Eighty-four Boxes of Sugar, 7 Peters, 453; Two Hundred Chests of Tea, 9 Wheat. 430; McIlvaine *v.* Coxe, 4 Cranch, 209; Markle *v.* Akron, 14 Ohio, 509, 591; The Palmyra, 12 Wheat. 1; The Whiskey Cases, 99 U. S. 594; Dobbins' Distillery, 96 U. S. 395; Three Tons of Coal, 6 Biss. 379.

[3] The Rio Grande, 19 Wall. 178.

[4] The Josepha, etc., 10 Wheat. 312.

[5] The Blanche Page, 16 Blatchf. 1; The C. T. Ackerman, 14 Blatchf. 360; Cargo of Schooner North Carolina, 15 Peters, 40.

[6] United States *v.* La Vengeance, 3 Dall. 297; Schooner Little Charles, 1 Brock, 354, 374; The Palmyra, 12 Wheat. 1.

the foundation for the two classes first mentioned is purely fictitious without the semblance of fact in its composition, and the third class has little more of fact in its foundation although there is some reason for asserting that a thing may be in fact indebted, as, for instance, where a watch or a wagon is increased in value by repairs or improvements placed upon it. There is, however, little practical use for resorting to fiction for the doctrine may well be placed upon a solid basis of fact. Where there is money due as compensation for a loss actually suffered or where there is a right to damages or a necessity for inflicting a punishment by way of penalty and the property is within the jurisdiction of the court there is no reason why it may not, without inventing any fiction, be seized and sold. It is well settled that where the property is within the territorial jurisdiction of the court proceedings against it in a proper mode constitute due process of law.[1] Proceedings *in rem* are civil and not criminal, no matter what may be the ground upon which the seizure is made.[2]

§ 244. **Jurisdiction in personam.**—A fundamental requisite to jurisdiction of the person is that of notice. No judgment, it is safe to say, can be valid as against a person unless he has notice according to the law of the land.[3] We do not mean to be understood as saying that no judgment affecting the rights of persons in some degree may not be valid without notice, for it is almost impossible to conceive of a case wherein the rights of persons are not in some measure affected by a judgment or decree. Even in judgments purely *in rem* the rights of persons are affected and in most cases very materially. Thus, in a proceeding to condemn property seized for a violation of law and under the legal fiction that the property is the offender, the rights of the owners, or of those having an interest in it,

[1] The Confiscation Cases, 20 Wall. 92; La Vengeance, 3 Dall. 297, 301; Whelan *v.* United States, 7 Cranch, 112; The Betsey and Charlotte, 4 Cranch, 446; Fisher *v.* McGin, 1 Gray, 1.

[2] Barnacoat *v.* Gunpowder, 1 Met. 230; State *v.* Barrels of Liquor, 47 N. H. 369; Anonymous, 1 Gal. 22; United States *v.* Gundy, 3 Cranch, 337.

[3] See Process.

are involved. But such actions, as we have seen, are not *in personam*.[1] In suits which are of a mixed nature, such, for instance, as a suit to foreclose a mortgage on real estate, the rights of the mortgagor and of lienholders are very materially affected, inasmuch as the decree of foreclosure sweeps away the equity of redemption. In such suits, however, substituted or constructive notice is sufficient to confer jurisdiction if the parties are not residents of the State in which the land is situated. The land is really the principal thing, and as the principal thing or element determines the jurisdiction, so that a suit to foreclose the lien can not be regarded as a purely personal action or suit. If, however, a judgment against the person is also sought, then as to that element the suit is personal. We think, therefore, that it may be justly assumed that there is a class of actions which may be appropriately denominated "mixed," inasmuch as they blend the elements of actions *in personam* and actions *in rem*, and while partaking of the nature of the two classes, can not be justly assigned to either of them. In these mixed actions or suits there must, as we believe, be some notice, although it need not necessarily and invariably be actual notice.[2] If, however, a personal judgment

[1] Personal actions are usually said to be those brought for the recovery of specific personal property, for injuries to person or personal property. Actions for the recovery of real estate are not personal actions in the strict sense of the term although they may sometimes partake of the nature of such actions as where damages are recoverable. In personal actions the judgment is for the recovery of damages or of chattels. But the term "personal judgment," is usually confined to cases where the action is a personal one in the strict sense. We, however, think it must have a wider signification where, as here, the general subject of jurisdiction is under discussion. There are judgments, using the term "judgments" in a comprehensive sense, which are personal although they neither concern personal property nor award damages. Thus, a decree of a court of equity directing specific performance of a contract concerning land directly affects the person, as does a decree for the cancellation of a deed, or a decree directing the rescission of a contract. Where the person is acted upon by a judgment or decree the proceeding is *in personam*, although real estate may be involved.

[2] We think that in the case of Dorr *v.* Rohr, 82 Va. 359, S. C. 3 Am. St. R. 106, the court states the doctrine too broadly and that the error is attributable to the fact that it lost sight of the distinction between actions purely *in rem* and *quasi* proceedings *in rem*. As

is sought there must be notice other than by publication.[1] An action purely *in personam* is an adversary proceeding requiring the presence of the defendant, or, such notice to him as the law requires, or else a waiver of notice. Where the defendant has been given notice, or has waived it, and the judgment or decree sought is purely personal, jurisdiction to award the judgment or decree exists, although it may affect property in another State. A purely personal action may be maintained, no matter where property ultimately or indirectly affected by it may be situated. This doctrine was long since declared by the court of chancery.[2] The doctrine that equity acts *in personam* and not *in rem* impresses upon equity jurisdiction a peculiar characteristic and that is this: Where the person is subject to its authority a decree may be entered in a proceeding of a purely equitable nature, although the property involved

we have shown seizure is notice where the proceeding is purely *in rem*, that is against a hostile or guilty thing. In the cases of Windsor *v.* McVeigh, 93 U. S. 274, there was no complete seizure of the *res*, and in McVeigh *v.* United States, 11 Wall. 259, the question was as to the right of one asserted to be an alien enemy to appear and defend. In Dean *v.* Nelson, 10 Wall. 158, the proceeding was a mixed one, for it was a proceeding to establish the liability of a thing indebted, and this is true of Lasere *v.* Rochereau, 17 Wall. 437, and of Earle *v.* McVeigh, 91 U. S. 503. The cases of Galpin *v.* Page, 18 Wall. 350, and *Ex parte* Lange, 18 Wall. 163, do little more than assert the general principle regarding notice.

[1] Pennoyer *v.* Neff, 95 U. S. 714; St. Clair *v.* Cox, 106 U. S. 350; Smith *v.* Eaton, 36 Me. 298, S. C. 58 Am. Dec. 746; Mattingly *v.* Corbit, 7 B. Monr. 376; Austin *v.* Bodley, 4 T. B. Monr. 434; Collinson *v.* Teal, 4 Sawy. 241; Parrott *v.* Alabama, etc., Co., 5 Fed. R. 391; Clayton *v.* Clayton, 4 Colo. 410; Dearing *v.* Bank of Charleston, 5 Ga. 497, S. C. 48 Am. Dec. 300; King *v.* Vance, 46 Ind. 246; Lutz *v.* Kelly, 47 Iowa, 307; Eaton *v.* Badger, 33 N. H. 228; Bartlett *v.* Spicer, 75 N. Y. 528; Miller *v.* Miller, 1 Bailey, 242; Boswell's Lessee *v.* Otis, 9 How. (U. S.) 336; Picquet *v.* Swan, 5 Mason, 35.

[2] Penn *v.* Lord Baltimore, 1 Vesey Sen. 444, 2 Leading Cases in Equity, 1806. The rule declared in the case cited has been enforced in a long line of decisions and has been applied in a great diversity of cases. Brown *v.* Desmond, 100 Mass. 267; Davis *v.* Parker, 14 Allen, 94; Pingree *v.* Coffin, 12 Gray, 288; Gardner *v.* Ogden, 22 N. Y. 332, 339; Bailey *v.* Ryder, 10 N. Y. 363; Newton *v.* Bronson, 13 N. Y. 587; Sutphen *v.* Fowler, 9 Paige, 280; Hawley *v.* James, 7 Paige, 213; Mead *v.* Merritt, 2 Paige, 402; Watkins *v.* Holman, 16 Pet. 25; Caldwell *v.* Carrington, 9 Pet. 86; Moore *v.* Jaeger, 2 McArthur, 465.

may be in a foreign country. Here, again, we encounter the class of cases we denominated mixed, for while it is the prerogative of courts of equity to decree the foreclosure of liens upon real estate, yet, as we suppose, a court in New York could not decree the foreclosure of a mortgage executed upon land situated in Connecticut or any other State,[1] but the courts of the State in which the land lies could upon notice, either actual or constructive, decree a foreclosure, no matter where the parties resided. As we have elsewhere said, a case such as that just instanced partakes of the elements of personal and real actions so largely that the proceedings in it can not, with strict accuracy, be denominated actions *in personam* nor can they be denominated proceedings *in rem*. In theory the decrees of equity act only upon the conscience of the party, but practically they do act upon the property. Thus, in the great class of cases where decrees enforcing the specific performance of contracts concerning land are granted, the decree necessarily and vitally affects the question of title, and yet it is firmly settled that a suit to enforce such a contract is a proceeding *in personam* and not *in rem*, and may be maintained where there is jurisdiction of the person, although the land involved in the controversy may be situated in another State.[2] Injunctions may be issued, where the defendant is within the jurisdiction

[1] Farmers' Loan, etc., Co. *v.* Postal Tel. Co., 55 Conn. 334, S. C. 3 Am. St. R. 53. See Wimer *v.* Wimer, 82 Va. 890, S. C. 3 Am. St. 126; Blanchard *v.* Burrell, 13 Mass. 4, S. C. 7 Am. Dec. 106; Dickinson *v.* Hoomes, 8 Gratt. 353; Barger *v.* Buckland, 28 Gratt. 850; Poindexter *v.* Burwell, 82 Va. 507; Piedmont Coal Co. *v.* Green, 3 W. Va. 54, S. C. 98 Am. Dec. 799; Cooley *v.* Scarlett, 38 Ill. 316, S. C. 87 Am. Dec. 298; City Insurance Co. *v.* Commercial Bank, 68 Ill. 348; Johnson *v.* Kimbro, 3 Head. 551, S. C. 75 Am. Dec. 781; Molyneux *v.* Seymour, 30 Ga. 440, S. C. 76 Am. Dec. 662; Sturgis *v.* Fay, 16 Ind. 429, S. C. 79 Am. Dec. 440.

[2] Watkins *v.* Holman, 16 Pet. 25; Mitchell *v.* Bunch, 2 Paige, 606; Cleveland *v.* Burrill, 25 Barb. 532; Neuborn *v.* Bronson, 13 N. Y. 587; Massie *v.* Watts, 6 Cranch, 148; Shattuck *v.* Cassidy, 3 Ed. Ch. R. 152; Monnett *v.* Turpie, 132 Ind. 484, 486; Bethell *v.* Bethell, 92 Ind. 318, 322; Morgan *v.* Bell (Wash.), S. C. 16 Lawy. Rep. Anno. 614; Blanchard *v.* Russell, 13 Mass. 1, S. C. 7 Am. Dec. 106; Davis *v.* Headly, 22 N. J. Eq. 115; Hayden *v.* Yale (La.), 12 So. R. 633; McQuerry *v.* Gilliland, 89 Ky. 434; Ward *v.* Arredondo, 1 Hopk. Ch. 213; Sutphen *v.* Fowler, 9 Paige, 280.

of the court, prohibiting the performance of acts in another State.[1] In all such cases as those in which specific performance of contracts concerning lands is enforced, the underlying theory is that the decree operates upon the conscience of the party and not upon the property, and this is essential to a successful maintenance of the doctrine, for otherwise it would come into conflict with the settled rule that the courts of one State can not determine the title to property in another State. To avoid the conflict between the two great rules under mention the courts hold that the decree directing performance operates upon the person and that it is the conveyance executed pursuant to it that operates upon the title.[2] It is not easy to

[1] Cole *v.* Cunningham, 133 U. S. 107, S. C. 10 Sup. Ct. R. 269. In the case cited the subject is ably considered and the authorities exhaustively reviewed. The opinion demonstrates the soundness of the general doctrine that equity will prevent parties within one State from taking proceedings in another for the purpose of evading the exemption laws of the State where the parties reside. The court quoted with approval Lord Chancellor Brougham's statement of the rule in the case of Lord Portarlington *v.* Soulby, 3 Mylne & K. 104, where the chancellor declared "Nothing can be more unfounded than the doubts of the jurisdiction. That is grounded like all other jurisdiction of the court, not upon any pretension to the exercise of judicial and administrative rights abroad but on the circumstance of the person of the party on whom this order is made being within the power of the court." The court also quotes approvingly the statement of Mr. Justice Swayne in Phelps *v.* McDonald, 99 U. S. 298, 308, that "Where the necessary parties are before a court of equity, it is immaterial that the *res* of the controversy, whether it be real or personal property, is beyond the territorial jurisdiction of the tribunal. It has the power to compel the defendant to do all things necessary, according to the *lex loci rei sitæ*, which he could do voluntarily, to give full effect to the decree against him. Without regard to the situation of the subject-matter, such courts consider the equities between the parties and decree *in personam* according to those equities, and enforce obedience to their decrees by process *in personam*." See, generally, Snook *v.* Snetzer, 25 Ohio St. 516; Railroad Co. *v.* Thompson, 31 Kan. 180, S. C. 1 Pac. R. 622; Keyser *v.* Rice, 47 Md. 203; Zimmerman *v.* Franke, 34 Kan. 650, S. C. 9 Pac. R. 747; Wilson *v.* Joseph, 107 Ind. 490, S. C. 8 N. E. R. 616; Chaffee *v.* Quidnick Co., 13 R. I. 442, 449; Manufacturing Co. *v.* Worster, 23 N. H. 462; Pickett *v.* Ferguson, 45 Ark. 177; Dinsmore *v.* Neresheimer, 32 Hun, 204; Erie Ry. Co. *v.* Ramsey, 45 N. Y. 637.

[2] This question received consideration in Lindley *v.* O'Reilly, 50 N. J. L. 636, S. C. 7 Am. St. R. 802. In the opinion given in that case it was said: "Ever since Penn *v.* Lord Baltimore, 1 Ves. Sr. 444, it has been established

draw with exact accuracy the line between a personal judgment in the strict sense, and judgments of a different nature, so that

law that in cases of contract, trust, or fraud, the equity courts of one State or country having jurisdiction of the parties are competent to entertain a suit for specific performance, or to establish a trust, or for a conveyance, although the contract, trust, or fraudulent title pertains to lands in another State or country. The principle upon which this jurisdiction rests is, that chancery, acting *in personam*, and not *in rem*, holds the conscience of the parties bound without regard to the *situs* of the property. It is a jurisdiction which arises when a special equity can be shown which forms a ground for compelling a party to convey or release, or for restraining him from asserting a title or right in lands so situated, and is strictly limited to those cases in which the relief decreed can be obtained through the party's personal obedience. If it went beyond that, the assumption of jurisdiction would not only be presumptuous, but ineffectual. Westlake on International Law, 57, 58. The decree in a suit of this aspect imposes a mere personal obligation, enforceable by injunction, attachment, or like process, against the person, and can not operate *ex proprio vigore* upon lands in another jurisdiction to create, transfer, or vest a title. The cases on this subject are numerous. They are collected in the note to Penn *v.* Lord Baltimore, 2 Lead. Cas. Eq. 1806 (923); Ewing *v.* Orr Ewing, L. R., 9 App. C. 34, Brett's Lead. Cas. Eq. 234; Norris *v.* Chambres, 29 Beav. 246; Massie *v.* Watts, 6 Cranch, 148; Wood *v.* Warner, 15 N. J. Eq. 81; Vaughan *v.* Barclay, 6 Whart. 392. In Davis *v.* Headley, 22 N. J. Eq. 115, the complainant obtained a decree in the circuit court of Kentucky against Headley that a conveyance of lands in New Jersey, made by the complainant, should be rescinded and set aside, the possession restored, and the defendant enjoined from setting up the conveyance. He then filed a bill in the court of chancery of this State to enforce the decree. The jurisdiction of the parties and of the subject-matter of that suit was undisputed. The bill to enforce the decree was, nevertheless, dismissed. Chancellor Zabriskie, in dismissing the bill declared that it was a well settled principle of law in the decisions of England and of this country, and acquiesced in by the jurists of all civilized nations, that immovable property is exclusively subject to the laws and jurisdiction of the courts of the State or nation in which it is located, and that no other laws or courts could affect it. He added, 'I find no case in which a statute, judgment, or proceeding in one country has been held to affect such property in another country, or beyond the jurisdiction of the sovereign or court making the statute or decree.' After referring to Penn *v.* Lord Baltimore, *supra*, and the cases in which decrees for specific performance of contracts relating to lands without their jurisdiction were made, the learned chancellor said: 'But in these cases it is admitted, as it was by Lord Hardwicke, that these decrees could not affect the land, but could only be enforced where the court had jurisdiction of the person of the defendant, and thus compel him to execute the conveyance. In such cases, it is the conveyance, and not the decree, that has the effect.' A similar precedent in the federal courts enforced the same view. Watts *v.*

perhaps the best that can be done is to refer to some of the adjudged cases. It has been held that a decree cancelling a negotiable instrument is personal, and for its effectiveness requires jurisdiction of the person,[1] and so of a policy of insurance.[2] Going somewhat farther in the same general direction are those cases which hold that an order discharging a debtor under a State insolvent statute is personal, and is not sufficiently supported as against a creditor who has only constructive or substituted notice.[3] Where a stock subscription is in

Waddle, 1 McLean, 200, S. C. 6 Pet. 389. Lands situate in Ohio were covered by two patents, one issued to Powell and the other to Watts. To remove this cloud upon his title, Watts commenced a suit against Powell's heirs in the circuit court for the district of Kentucky and obtained a decree sustaining his title. The court had jurisdiction of the parties. By the decree, the defendants were required to convey the premises to the complainant. A statute of Kentucky authorized the court, in case the defendant in such a suit failed to convey, to appoint a commissioner to make conveyance. By the decree, a commissioner was appointed, and no conveyance having been made by the parties, a deed was executed by the commissioner. A suit afterwards brought in the federal circuit court of Ohio brought in question the effect of the decree of the Kentucky court, and of the commissioner's deed in execution of it, upon the title to the lands. The court held that neither the decree nor the commissioner's deed vested the legal title in the complainant. In the opinion in the Supreme Court, Mr. Justice McLean said: 'The most decisive objection to the decree against Powell's heirs is, that it does not vest the legal title in Watts. A decree can not operate beyond the State in which the jurisdiction is exercised. It is not in the power of one State to prescribe the mode by which real property shall be conveyed in another. This principle is too clear to admit of doubt.' These cases rest upon the rule which is firmly established, that the courts of one State or country are without jurisdiction over title to lands in another State or country. The clause of the Federal Constitution which requires full faith and credit to be given in each State to the records and judicial proceedings of every other State is subordinate to this rule, and applies to the records and proceedings of the courts only so far as they have jurisdiction. Public Works *v.* Columbia College, 17 Wall. 521; Watts *v.* Waddle, 6 Pet. 389; Brine *v.* Insurance Co., 96 U. S. 627, 635; Davis *v.* Headley, 22 N. J. Eq. 115, 121; Nelson *v.* Potter, 50 N. J. L. 324."

[1] Pana *v.* Bowler, 107 U. S. 529, S. C. 2 Sup. Ct. R. 704; Empire *v.* Darlington, 101 U. S. 529; Brooklyn *v.* Insurance Co., 99 U. S. 362, 370.

[2] Insurance Co. *v.* Bangs, 103 U. S. 435.

[3] Baldwin *v.* Hale, 1 Wall. 223; Hawly *v.* Hunt, 27 Iowa, 303, S. C. 1 Am. R. 273; Chase *v.* Flagg, 48 Me. 182; Felch *v.* Bugbee, 48 Me. 9; Guernsey *v.* Wood, 130 Mass. 503; Gardner *v.* Oliver Lee Bank, 11 Barb. 558; *In re* Waite, 99 N. Y. 433; Kelley *v.* Drury, 9 Allen, 27; Pratt *v.* Chase, 44 N. Y.

part unpaid and the subscriber is notified to pay the balance due a judgment for that balance is a personal judgment.[1] A wide stretch of the doctrine requiring actual notice was made in a case wherein it was held that a provision in a decree of divorce rendered upon constructive notice, prohibiting the defendant from marrying was void.[2] It was held in another case that, where stock held in the name of a South Carolina bank in a Georgia bank, was sold upon execution, a suit against the South Carolina bank to enjoin it from asserting title to the stock, was *in personam* and could not be maintained in Georgia upon constructive notice.[3] Where a judgment is for damages, and it is enforceable by an ordinary writ of execution, the proceeding is *in personam*. The general and far-reaching rule is that where a decree or judgment creates a personal duty or obligation, or declares a personal charge, the proceedings are ineffective unless there is actual notice, that is, notice by summons or subpœna. It is understood, of course, that notice may always be waived by the person entitled to it under the law.

§ 245. **Status of persons—Authority to determine**—There is a species of jurisdiction to which it is difficult to assign a

597; Soule *v.* Chase, 39 N. Y. 342; Easterly *v.* Goodwin, 35 Conn. 279, S. C. 95 Am. Dec. 237. See, generally, Ogden *v.* Saunders, 12 Wheat. 213; Norton *v.* Cook, 9 Conn. 314, S. C. 23 Am. Dec. 342; Poe *v.* Duck, 5 Md. 1; Donnelly *v.* Corbett, 7 N. Y. 500; Whitney *v.* Whiting, 35 N. H. 457; Gilman *v.* Lockwood, 4 Wall. 409. But see, May *v.* Breed, 7 Cush. 15, S. C. 54 Am. Dec. 700. If the creditor appears and accepts a dividend we suppose he would be bound. Phelps *v.* Borland, 103 N.Y. 406, S. C. 57 Am. R. 755; Clay *v.* Smith, 3 Pet. 411. The court having acquired complete jurisdiction of the estate could, as to the property in custody of its ministers or officers, make an order binding upon all creditors having constructive notice to the extent of the property.

[1] Wilson *v.* St. Louis, etc., Co., 108 Mo. 588, S. C. 18 So. W. R. 286; Wilson *v.* Seligman, 36 Fed. R. 154. See same case on appeal, 144 U. S. 41.

[2] Van Stoach *v.* Griffin, 71 Pa. St. 240. If the case cited is to be understood as holding that the part of the decree dissolving the marital relation was valid, but the prohibitory clause void, its soundness may well be doubted inasmuch as jurisdiction of the principal matter was sufficient to sustain the incidental order.

[3] Dearing *v.* Bank of Charleston, 5 Ga. 497, S. C. 48 Am. Dec. 300. It seems to us that as the stock was actually seized there was jurisdiction of the *res*, and that constructive notice authorized an injunction. This would seem to follow from the doctrine respecting proceedings in attachment.

place under the accepted classifications of the general subject of jurisdiction, and that species is, jurisdiction to determine or declare the *status* of persons resident or domiciled within a State. This jurisdiction is generally assigned a place as a subdivision of jurisdiction *in rem*, and while the *status* may, in a certain sense, be regarded as the *res*, yet it is not easy to give a satisfactory reason for regarding jurisdiction to declare the *status* of persons as a division of the general subject of jurisdiction *in rem*. It seems to us that the jurisdiction exercised in declaring the *status* of persons is a division of itself, for there is great difficulty in establishing the affinity of such jurisdiction to that which is invoked *in rem* against things hostile, things guilty or things indebted. Adjudging that a marriage is dissolved is a very different thing from adjudging that fifty barrels of whisky shall be sold because of the violation of a revenue law. The difference is inherent and radical in almost every aspect in which the question can be viewed. Between a case declaring the position or relationship of an adopted child and a case subjecting property to sale because it is a guilty thing, there is, as every one can see, a wide and intrinsic difference. Treating jurisdiction of the *status* of persons as a member of the class, jurisdiction *in rem*, serves to breed confusion, since it confounds persons and things in a way that produces obscurity. There is, it is true, this element common to both classes, namely, that a judgment or decree is operative against all persons whatsoever. Thus, if a decree of divorce is validly pronounced it settles the *status* of the parties as to all the world, and so also does a decree declaring a child duly adopted. But this common element does not, by any means, justify the conclusion that the two species are not essentially different, for all cognate species of a great general class must have some elements in common else they could not be considered members of one class. The marital relation is a *status* since marriage is something more than a mere civil contract, so that a decree or judgment dissolving this relation is a decree

or judgment affecting the *status* of the parties.[1] As the decree of divorce operates to fix the *status* of the parties, it is obvious that at least one of the parties must be a resident of the State in which the divorce is granted, for it is not within the power of any governmental department of one State to establish by a statute, decree or judgment the *status* of the residents of another State.[2] It is upon this principle that it is held by many of the courts that a decree rendered by default upon constructive service where neither of the parties are residents of the State is void because there is no jurisdiction,[3] but upon this general subject there is much diversity of opinion.[4] It seems to us

[1] Watkins *v.* Watkins, 125 Ind. 163; Hood *v.* State, 56 Ind. 263, S. C. 26 Am. R. 21; Tolen *v.* Tolen, 2 Blackf. 407; Hoffman *v.* Hoffman, 46 N. Y. 30; Kerr *v.* Kerr, 41 N.Y. 272; Dutcher *v.* Dutcher, 39 Wis. 651; Davis *v.* Commonwealth, 13 Bush. 318; State *v.* Armington, 25 Minn. 29; Reed *v.* Reed, 52 Mich. 117; Strait *v.* Strait, 3 McArthur, 415; Sewall *v.* Sewall, 122 Mass. 156; Van Fossen *v.* State, 37 Ohio St. 317; Whitcomb *v.* Whitcomb, 46 Iowa, 437; Litowich *v.* Litowich, 19 Kan. 451.

[2] Strader *v.* Graham, 10 How. (U. S.) 82.

[3] People *v.* Dawell, 25 Mich. 247, S. C. 12 Am. R. 260; Hood *v.* State, 56 Ind. 263, S. C. 26 Am. R. 21; Watkins *v.* Watkins, 125 Ind. 163; Williams *v.* Williams, 130 N. Y. 193; O'Dea *v.* O'Dea, 101 N. Y. 23; Jones *v.* Jones, 108 N. Y. 415; De Meli *v.* De Meli, 120 N. Y. 485, 495; People *v.* Baker, 76 N. Y. 78, 84; Cross *v.* Cross, 108 N. Y. 628, S. C. 15 N. E. R. 333; State *v.* Fleak, 54 Iowa, 429; Burlen *v.* Shannon, 99 Mass. 200, S. C. 96 Am. Dec. 733; Chaney *v.* Bryan, 15 Lea, 589; State *v.* Armington, 25 Minn. 29; Smith *v.* Smith, 19 Neb. 706; Van Fossen *v.* State, 37 Ohio, 317, S. C. 41 Am. R. 507; Gregory *v.* Gregory, 76 Me. 535, S. C. 57 Am. R. 792; Reed *v.* Reed, 52 Mich. 117, S. C. 50 Am. R. 247; Gettys *v.* Gettys, 3 Lea, 260, S. C. 31 Am. R. 637; Neff *v.* Beauchamp, 74 Iowa, 92; Leith *v.* Leith, 39 N. H. 20; Holmes *v.* Holmes, 4 Lans. 388; Colvin *v.* Reed, 55 Pa. St. 375; Doughty *v.* Doughty, 27 N. J. Eq. 315, 321; Flower *v.* Flower, 42 N. J. Eq. 152, S. C. 7 Atl. R. 669; Irby *v.* Wilson, 1 Dev. & Bat. Eq. 568; Zerfass' Appeal, 135 Pa. St. 522, S. C. 19 Atl. R. 1056; Cook *v.* Cook, 56 Wis. 195, S. C. 43 Am. R. 706, 14 N. W. R. 33; Murray *v.* Murray, 6 Ore. 17, 24; Colliss *v.* Hector, L. R. 19 Eq. 334, 340.

[4] Smith *v.* Smith, 43 La. Ann. 1140, S. C. 10 So. R. 248; Glaude *v.* Peat, 43 La. Ann. 161, S. C. 8 So. R. 884; Van Orsdal *v.* Van Orsdal, 67 Iowa, 35, S. C. 24 N. W. R. 579; Gould *v.* Crow, 57 Mo. 200, 204; Cox *v.* Cox, 19 Ohio St. 502; Holmes *v.* Holmes, 57 Barb. 305, 307; Hull *v.* Hull, 2 Strob. Eq. 174; Manley *v.* Manley, 4 Chandl. 96; Arrington *v.* Arrington, 102 N. C. 491, S. C. 9 S. E. R. 200; Hubbell *v.* Hubbell, 3 Wis. 662, S. C. 62 Am. Dec. 702; Mansfield *v.* McIntyre, 10 Ohio, 28; Ditson *v.* Ditson, 4 R. I. 87; Harrison *v.* Harrison, 19 Ala. 499; Harding *v.* Alden, 9 Greenl. 146, S. C. 23 Am. Dec. 549; Estate of Newman, 75 Cal. 213, S. C. 7 Am. St. R. 146.

that where one of the parties is a *bona fide* resident of the State the courts of that State have jurisdiction to determine upon constructive notice, the *status* of the parties.[1] The cases make a distinction, and with reason, between decrees affecting only the *status* and those which assume to determine, upon mere constructive notice, rights affecting property in another State, or which create a personal charge against one of the parties personally. There is, it is evident, a difference of an essential character between the *status* of persons and rights which are purely of a personal or property nature, so that there is reason for holding that a judgment for alimony can not be rendered upon constructive notice.[2] Such a judgment, if valid, creates

[1] This view is asserted by Judge Cooley, and it has been substantially approved by the Supreme Court of the United States, in Cheely *v.* Clayton, 110 U. S. 701, S. C. 4 Sup. Ct. R. 328. In the case cited it was said: "The courts of the State of the domicile of the parties doubtless have jurisdiction to decree a divorce, in accordance with its laws, for any cause allowed by those laws, without regard to the place of the marriage, or to that of the commission of the offense for which the divorce is granted; and a divorce so obtained is valid everywhere. Story Confl. Laws, § 230a; Cheever *v.* Wilson, 9 Wall. 108; Harvey *v.* Farnie, 8 App. Cas. 43. If a wife is living apart from her husband without sufficient cause his domicile is in law her domicile; and, in the absence of any proof of fraud or misconduct on his part, a divorce obtained by him in the State of his domicile, after reasonable notice to her, either by personal service or by publication, in accordance with its laws, is valid, although she never in fact resided in that State. Burlen *v.* Shannon, 115 Mass. 438; Hunt *v.* Hunt, 72 N. Y. 217. But in order to make the divorce valid, either in the State in which it is granted or in another State, there must, unless the defendant appeared in the suit, have been such notice to her as the law of the first State requires." Much to the same effect is the decision in Maynard *v.* Hill, 125 U. S. 190, S. C. 8 Sup. Ct. R. 723, where the court considered the *status* of marriage and said, among other things, that, "One of the parties, the husband, was a resident within the territory, and, as he acted soon afterwards upon the dissolution and married again, we may conclude that the act was passed upon his petition. If the assembly possessed the power to grant a divorce in any case, its jurisdiction to legislate upon his *status*, he being a resident of the territory, is undoubted, unless the marriage was a contract within the prohibition of the federal constitution against its impairment by legislation, or within the terms of the ordinance of 1787, the privileges of which were secured to the inhabitants of Oregon by their organic act,—questions which we will presently consider." See, also, Cooley's Const. Lim., 400; Wharton Conflict of Laws, § 224–229; Cheever *v.* Wilson, 9 Wall. 108.

[2] Prosser *v.* Warner, 47 Vt. 667, S. C. 19 Am. R. 132; Lytle *v.* Lytle, 48 Ind.

an obligation that is essentially a personal charge. The doctrine stated is rested by some of the courts upon the principle that the jurisdiction extends only to the *status* and that the *status* does not draw to it any incidents of such a character as will confer extra territorial jurisdiction to impose a personal charge or determine property rights. It is probably true that when there is property within the State where the suit is prosecuted, that is seized under attachment, or other process authorizing a seizure, there may be a valid adjudication as to that property, but not as to property beyond the limits of the State. An inquest of lunacy determines the *status* of the person, and it is held that a failure to give notice to the person whose insanity is adjudged does not render the proceeding void,[1] but there are cases declaring a different doctrine.[2] Courts of equity, although they act only *in personam*, take charge of the estates of infants and of the estates of persons *non compos mentis*, but this they do through ministers or agents as guardians, trustees and the like. In such cases the proceeding can not be said to be *in rem*, for equity does not act upon property. Indeed, in many

200; Gould *v.* Crow, 57 Mo. 200; Jackson *v.* Jackson, 1 Johns. 424; Crane *v.* Meginnis, 1 Gill. & J. 463, S. C. 19 Am. Dec. 237; Townsend *v.* Griffin, 4 Harr. (Del.) 440; Kline *v.* Kline, 57 Iowa, 386; Beard *v.* Beard, 21 Ind. 321; Sanford *v.* Sanford, 5 Day, 353; Turner *v.* Turner, 44 Ala. 437. See, generally, Webster *v.* Reid, 11 How. (U. S.) 437; Boswell *v.* Otis, 9 How. (U. S.) 336; Montgomery *v.* Samory, 99 U. S. 482; Middleworth *v.* McDowell, 49 Ind. 386; Phelps *v.* Baker, 60 Barb. 107, 110; City of Philadelphia *v.* Wetherby, 15 Phila. 403; Colvin *v.* Reed, 55 Pa. St. 375, 380; Reel *v.* Elder, 62 Pa. St. 308; Van Cleaf *v.* Burns, 133 N. Y. 540, S. C. 30 N. E. R. 661; Roth *v.* Roth, 104 Ill. 35, 43.

[1] Dodge *v.* Cole, 97 Ill. 338, S. C. 37 Am. R. 111; Dutcher *v.* Hill, 29 Mo. 271, 273; Bethea *v.* McLennon, 1 Ired. L. 523, 527; McKim *v.* Doane, 137 Mass. 195; Medlock *v.* Cogburn, 1 Rich. Eq. 477.

[2] Wait *v.* Maxwell, 5 Pick. 217, S. C. 16 Am. Dec. 391; Chase *v.* Hathway, 14 Mass. 222; Conkey *v.* Kingman, 24 Pick. 115; Smith *v.* Burlingame, 4 Mason, 121; McCurry *v.* Hooper, 12 Ala. 823, S. C. 46 Am. Dec. 280; Eslava *v.* Lepretre, 21 Ala. 504, S. C. 56 Am. Dec. 266; Lance *v.* McCoy, 34 W. Va. 416, S. C. 12 S. E. R. 728. See, Coolidge *v.* Allen, 82 Me. 23, S. C. 19 Atl. R. 89; Commonwealth *v.* Kirkbride, 7 Phila. 8; Hutts *v.* Hutts, 62 Ind. 214; Tracy's Case, 1 Paige, 580; Vanauken's Case, 2 Stock. (N. J.) 186; Whitenack's Case, 2 Green Ch. 252; Nyce *v.* Hamilton, 90 Ind. 417; Rogers *v.* Walker, 6 Pa. St. 371.

instances the personal welfare of the infant will invoke the exercise of the equitable jurisdiction.[1] It is, therefore, the *status* of the person that is in all such cases the essential element of jurisdiction.

§ 246. **Status of children—Authority to adjudge.**—In assuming, as courts of equity have done for almost time out of mind, jurisdiction over infant children,[2] the *status* of the children is necessarily involved and adjudicated. The *status* of an adopted child is fixed by the proceedings of the court which

[1] Cowles *v.* Cowles, 3 Gil. (Ill.) 435; Maguire *v.* Maguire, 7 Dana, 181; Johnstone *v.* Beattie, 10 Cl. & Fin. 42. See, generally, Hutson *v.* Townsend, 6 Rich. Eq. 249; Striplin *v.* Ware, 36 Ala. 87; Goodman *v.* Winter, 64 Ala. 410; Garner *v.* Gordon, 41 Ind. 92; Wood *v.* Wood, 5 Paige, 596; State *v.* Baird, 18 N. J. Eq. 194; Matter of Hubbard, 82 N. Y. 90.

[2] An able vindication of the jurisdiction of equity is that of Lord Eldon in Wellesley *v.* The Duke of Beaufort, 2 Russ. 1, and in De Manneville *v.* De Manneville, 10 Vesey, Jr. 52. See, also, Wellesley *v.* Wellesley, 1 Dow. N. S. 152; Aymar *v.* Roff, 3 John. Ch. 49; State *v.* Stigall, 2 Zab. (N. J.) 286, 289; State *v.* Baird, 18 N. J. Eq. 194; Downin *v.* Sprecher, 35 Md. 474; Armstrong *v.* Stone, 9 Gratt. 102, 106; Williamson *v.* Berry, 8 How. (U. S.) 495; Gardenhire *v.* Hinds, 1 Head. 402; Wood *v.* Wood, 5 Paige, 596; Wilcox *v.* Wilcox, 14 N. Y. 575; Succession of Landry, 11 La. Ann. 85. In the case of State *v.* Saunders (N. H.), 18 Lawy. Rep. Ann. 646, the court quoted from one of the earlier cases the following statement: "Equity, as a great branch of the law of their native country, was brought over by the colonists and has always existed as a part of the common law, in its broadest sense, in New Hampshire." The court cited the cases of Wells *v.* Peirce, 27 N. H. 503; Copp *v.* Hanniker, 55 N. H. 179, 210, S. C. 20 Am. R. 194; Penhallow *v.* Kimball, 61 N. H. 596; Carroll *v.* McCullough, 63 N. H. 95; Eckstein *v.* Downing, 64 N. H. 248. The statement quoted unquestionably expresses the true doctrine, for our American courts have general equity powers, and these powers exist unless expressly taken away by statute. Nealis *v.* Dicks, 72 Ind. 374; Ratliff *v.* Stretch, 130 Ind. 282, 284. The general doctrine upon the subject of the power of courts of equity to fix the *status* of children is thus stated in a recent work: "In the exercise of this jurisdiction the court may permanently fix the *status* of infants even in disregard of the legal rights of parents, when the welfare of the infant requires it." Beach, Modern Eq., § 1022. The author cites, among others the following cases: Richards *v.* Collins, 45 N. J. Eq. 283, S. C. 14 Am. St. 726; State *v.* Baird, 18 N. J. Eq. 194; Neider *v.* Reuff, 29 W. Va. 751, S. C. 6 Am. St. R. 676; Merritt *v.* Swimley, 82 Va. 433, S. C. 3 Am. St. R. 115; Stetson *v.* Stetson, 80 Me. 483; Umlauf *v.* Umlauf, 128 Ill. 378; Farrar *v.* Farrar, 75 Iowa, 125.

establishes its relationship to its adoptive parent or parents, and the *status* as fixed will be regarded as the true one by the courts of other States. The establishment of the *status* at the place of the domicile is such an adjudication as determines the general right of inheritance.[1] The *status* of a child where the question is as to its legitimacy may, in our opinion, be conclusively settled by a judgment of a court of competent jurisdiction. We do not refer to cases where the question is as to

[1] In the case of Ross *v.* Ross, 129 Mass. 243, S. C. 37 Am. R. 321, the subject was discussed with signal ability and the opinion is rich in authorities. In the course of the opinion it was said: "It is a general principle, that the *status* or condition of a person, the relation in which he stands to another person, and by which he is qualified or made capable to take certain rights in that other's property, is fixed by the law of the domicile; and that this *status* and capacity are to be recognized and upheld in every other State, so far as they are not inconsistent with its own laws and policy. Subject to this limitation, upon the death of any man, the *status* of those who claim succession or inheritance in his estate is to be ascertained by the law under which that *status* was acquired; his personal property is indeed to be distributed according to the law of his domicile at the time of his death, and his real estate descends according to the law of the place in which it is situated; but in either case, it is according to those provisions of that law which regulate the succession or the inheritance of persons having such a *status*." In concluding the court said: "We are not aware of any case, in England or America, in which a change of *status* in the country of the domicile, with the formalities prescribed by its laws, has not been allowed full effect, as to the capacity thereby created of succeeding to and inheriting property, real as well as personal, in any other country, the laws of which allow a like change of *status* in a like manner with a like effect under like circumstances. We are therefore of opinion that the legal *status* of child of the intestate, once acquired by the demandant under a statute and by a judicial decree of the State of Pennsylvania. While the parties were domiciled there, continued after their removal into this commonwealth, and that by virtue thereof the demandant is entitled to maintain this action." *Contra* Keegan *v.* Geraghty, 101 Ill. 26. The decision in Markover *v.* Krauss, 132 Ind. 294, is we think a sound one, but it is possible that some of the reasoning is not valid; as the proceedings for the adoption of the child whose interests were involved in that case fixed its *status* the conclusion of the court is right. See Vidal *v.* Commagere, 13 La. Ann. 516. But see Morrison *v.* Estate of Sessions, 70 Mich. 297, S. C. 14 Am. St. R. 500; Reinders *v.* Koppelman, 94 Mo. 344; Eyer *v.* Beck, 70 Mich. 179. See, generally, Estate of Newman, 75 Cal. 213, S. C. 7 Am. St. R. 146; Furgeson *v.* Jones, 17 Ore. 204, S. C. 11 Am. St. R. 808; Estate of Wardell, 57 Cal. 484.

the effect of a statute[1] declaring what shall be sufficient to make a child legitimate in legal contemplation, but to cases where the child and those directly interested are within the jurisdiction of the court. There is, it is obvious, a distinction of a very essential character between cases where the question of the legitimacy of the child is adjudicated and its *status* fixed and cases where the question is as to the effect of a statute. If the *status* of a child is fixed by an effective adjudication at the place of domicile that *status* is, as we believe, unalterably established.[2] It is held that where the children of the parties to a suit or action for divorce are not in the State where the decree or judgment is rendered an order consigning them to the custody of one or the other of the parties is void,[3] but if the children are within the territorial jurisdiction of the court and there is jurisdiction of the particular proceeding a judgment determining to whose custody the children shall be awarded is valid although rendered upon constructive notice. Where a judgment or decree is sought creating a personal charge against an infant child or affecting directly its property rights notice must be served upon it,[4] for without some notice there is no

[1] As to the extra territorial effect of such a statute, see Smith *v.* Kelly, 23 Miss. 167, S. C. 55 Am. Dec. 87; Scott *v.* Key, 11 La. Ann. 232; Harvey *v.* Ball, 32 Ind. 98; Miller *v.* Miller, 91 N. Y. 315, S. C. 43 Am. R. 669; VanVorhis *v.* Brintnall, 86 N. Y. 18, S. C. 40 Am. R. 505. It is held by some of the courts that a statute declaring who shall be considered children can have no extra territorial effect. Barnum *v.* Barnum, 42 Md. 251; Smith *v.* Derr, 34 Pa. St. 126, S. C. 75 Am. Dec. 641; Lingen *v.* Lingen, 45 Ala. 410. See, generally, Shaw *v.* Gould, L. R., 3 H. L. C. 55; Fenton *v.* Livingstone, 3 Macqu. 497; Shedden *v.* Patrick, 1 Macqu. 835; Birtwhistle *v.* Vardill, 2 Clark & F. 571.

[2] Greenwood *v.* Curtis, 6 Mass. 358, 377, S. C. 4 Am. Dec. 145; Medway *v.* Needham, 16 Mass. 157; West Cambridge *v.* Lexington, 1 Pick. 506, S. C. 11 Am. Dec. 231; Putnam *v.* Putnam, 8 Pick. 433; Commonwealth *v.* Lane, 113 Mass. 458, S. C. 18 Am. R. 509; Bullock *v.* Bullock, 122 Mass. 3; Millikin *v.* Pratt, 125 Mass. 380, 381, S. C. 28 Am. R. 241.

[3] Woodworth *v.* Spring, 4 Allen, 321; Van Orsdal *v.* Van Orsdal, 67 Iowa, 35; Kline *v.* Kline, 57 Iowa, 386, S. C. 10 N. W. R. 825.

[4] Probably this would not be strictly true in proceedings purely *in rem*, but in a general sense it is true. Galpin *v.* Page, 18 Wall. 350; Kremer *v.* Haynie, 67 Texas, 450; Coleman *v.* Coleman, 3 Dana, 398, S. C. 28 Am. Dec. 86; Allsmiller *v.* Freutchenicht, 86 Ky. 198; Young *v.* Young, 91 N. Car. 359; Ingersoll *v.* Mangam, 84 N.

jurisdiction in such cases.[1] But in cases where the *status* of the child is the only subject of judicial investigation the proceeding is so far in the nature of a proceeding *in rem* that notice to the infant is not essential to the existence of jurisdiction. This conclusion is supported by the uniform practice of appointing guardians for children without giving notice to the child or children.[2] Our conclusion finds support in the long settled rule that equity has general authority over infants and that notice to them is not indispensably necessary where the only decision that can be given relates to their *status*.[3] But

Y. 622; McCloskey *v.* Sweeney, 66 Cal. 53; Insurance Co. *v.* Bangs, 103 U. S. 435; Chambers *v.* Jones, 72 Ill. 275; Moore *v.* Starks, 1 Ohio St. 369; Good *v.* Norley, 28 Iowa, 188; Roy *v.* Rowe, 90 Ind. 54. As to the validity of proceedings against infants see, generally, Joyce *v.* McAvoy, 31 Cal. 273, S. C. 89 Am. Dec. 172; English *v.* Savage, 5 Ore. 518; Wilhite *v.* Wilhite, 124 Ind. 226; Sites *v.* Eldredge, 45 N. J. Eq. 632, S. C. 14 Am. St. R. 769; Burgess *v.* Kirby, 94 N. Car. 575; Sumner *v.* Sessoms, 94 N. Car. 371; Lawson *v.* Moorman, 85 Va. 880.

[1] As to whether a general guardian can waive notice, see Smith *v.* McDonald, 42 Cal. 485; Gronfier *v.* Puymirol, 19 Cal. 629. Regularly a guardian *ad litem* for the infant should be appointed, but the weight of authority is that the failure to appoint a guardian does not make the proceedings void. McBride *v.* State, 130 Ind. 525, S. C. 30 N. E. R. 699; Cohee *v.* Baer (Ind.), 32 N. E. R. 920; Coffey *v.* Proctor, etc., Co. (Ky.), 20 S. W. R. 286; Drake *v.* Hanshaw, 47 Iowa, 291; Myers *v.* Davis, 47 Iowa, 325; Simmons *v.* McKay, 5 Bush, 25. But see Whitney *v.* Porter, 23 Ill. 445. It seems clear to us that the failure to appoint a guardian *ad litem* is not a jurisdictional defect, but is an error in a proceeding of which the court has jurisdiction. This is clearly shown in the case of Hoover *v.* Kinsey, etc., Co., 55 Iowa, 668. In that case the court cited among others the following cases, Bloom *v.* Burdick, 1 Hill, 130; Timmons *v.* Timmons, 6 Ind. 8; Knapp *v.* Crosby, 1 Mass. 479; Miles *v.* Boyden, 3 Pick. 213; Starbird *v.* Moore, 21 Vt. 529; Randalls *v.* Wilson, 24 Mo. 76; Barber *v.* Graves, 18 Vt. 290.

[2] Whether the age is such, provided there is non-age, as authorizes the appointment of a guardian is a question regarding the *res*, and a decision of that question while it may be erroneous is not void. For this reason we think the decisions in such cases as Lessee of Perry *v.* Brainard, 11 Ohio, 442; Lewis *v.* Allred, 57 Ala. 628; Palmer *v.* Oakley, 2 Doug. (Mich.) 433, S. C. 47 Am. Dec. 41, are wrong. As the age of the infant is the thing to be judicially investigated and determined the decision goes to a jurisdictional question, and, as against a collateral attack is conclusive. It seems very clear that extrinsic evidence would not be admissible to impeach the record. Thompson *v.* Tolmie, 2 Pet. 16, 157.

[3] It is held in some of the cases that even in proceedings respecting property rights as such notice is not essential. Sheldon's Lessee *v.* Newton, 3

there are express decisions upon the question fully sustaining our conclusion, and affirming that the rule that notice is not essential to jurisdiction has never been authoritatively denied.[1] The *status* of a child is a matter of public concern, for the public have an interest of an important nature in the education and training of those who are to take upon themselves the duties of citizenship.[2] This public interest demands that the courts determine the *status* of parents and of children so far as that *status* affects the welfare of the public or of the children themselves, so that there is a right to judicially investigate the *res*, and where this right exists notice is not always a prerequisite to the existence of jurisdiction. Where the consideration of the public welfare is the paramount one the question concerns the political *status*[3] of the child, insomuch as the

Ohio St. 494; Heroman *v.* Louisiana Inst., 34 La. Ann. 805; Robb *v.* Irwin, 15 Ohio, 689; Preston *v.* Dunn, 25 Ala. 507; McAnear *v.* Epperson, 54 Texas, 220, S. C. 38 Am. R. 625.

[1] Kurts *v.* St. Paul, etc. (Minn.), 51 N. W. R. 221; Appeal of Gibson, 154 Mass. 378, S. C. 28 N. E. R. 296; Board of Children's Guardians *v.* Shutter (Ind.), 34 N. E. R. 665. In the first of the cases cited Mitchell, J., speaking for the court, said: "Notice to the infants is not the important or essential thing, for the very necessity for appointing a guardian for them arises out of the fact that they are incapable of managing their own estate, or of determining for themselves what is for their own interest. If they are of very tender years, and strictly *non sui juris*, notice to them would be an idle ceremony and utterly useless. Hence we conclude that the notice contemplated by statute does not necessarily require or include notice to the infants themselves, but that it is left to the sound discretion of the probate judge to order such notice to persons interested as natural guardians and next of kin as he shall deem most likely to inform them of the application, and thus, through their attendance, advise him of the extent and condition of the infant's estate, and of the expediency prayed for."

[2] Board of Children's Guardians *v.* Shutter (Ind.), 34 N. E. R. 665; Van Walters *v.* Board of Children's Guardians, 132 Ind. 567, S. C. 32 N. E. R. 568; Whalen *v.* Olmstead, 61 Conn. 263, S. C. 15 Lawy. Rep. Anno. 593; Prime *v.* Foote, 63 N. H. 52; Farnham *v.* Pierce, 141 Mass. 203; Milwaukee School, etc., *v.* Milwaukee, 40 Wis. 328; *Ex parte* Crouse, 4 Whart. (Pa.) 9; Jarrard *v.* State, 116 Ind. 98; *In re* Diss Debar, 3 N. Y. Supp. 667; *In re* Donohue, 52 How. Pr. 251; House of Refuge *v.* Ryan, 37 Ohio St. 197; Roth *v.* House of Refuge, 31 Md. 329; Reynolds *v.* Howe, 51 Conn. 472; *In re* Ferrier, 103 Ill. 367, S. C. 42 Am. R. 10; McClean *v.* Humphreys, 104 Ill. 378. But, see, People *v.* Turner, 55 Ill. 280.

[3] "The *status* of an individual, used as a legal term, means the legal position of the individual in or with re-

thing to be determined is what will be the result of its training and surroundings upon its future relations to society; if evil, there must be a power to remove it from those surroundings, since society is entitled to protection, and if such a power exists the infant can in no wise control its exercise, so that notice to it would be vain and fruitless. It is, of course, not every case by any means, in which a judicial decision is necessary to fix the *status* of a person; on the contrary, as every one knows, such a decision is very seldom required, but when there is such a decision by a court we think that it is in essence and effect, a judicial judgment. If it be granted that such a decision is a judicial judgment, then, it must follow that as to the *res* within the authority of the court, whatever the nature of that *res* may be, the judgment is conclusive as against a collateral attack from any quarter.[1] A judgment establishing the legitimacy of a child, or decreeing the adoption of a child, rendered upon due process of law, is, as we believe, everywhere throughout the United States entitled to "full faith and credit." Where a court is empowered to investigate the law or the facts of a particular matter respecting the *status* of a person, or of a thing, it necessarily acts in a judicial capacity and its judgment or decree is the product of judicial power. In determining the *status* of a person, where by law it is required to investi-

gard to the rest of a community." By Brett, L. J., in Niboyet *v.* Niboyet, L. R., 4 P. D. 1, 11.

[1] This conclusion is, we know, opposed to the decision in Brown *v.* Wheelock, 75 Texas, 385, S. C. 12 S.W. R. 111, but we respectfully deny the soundness of that decision. The court said, in speaking of the decree, "It acts merely upon the *status* of the applicant, enlarges his capacity as a free agent, and, as to all matters not political, places him upon the plane of persons who have attained their majority." It is further said: "The proceeding is *ex parte* and the interest of the applicant alone is to be affected or considered. Even the public has no interest as against his interest. He has no adversary." We regard this reasoning as fallacious. Where there is a *res* before the court and upon that *res* judgment of the court is to be given, there is in the giving of that decision a judgment of a judicial tribunal. If a judgment it is conclusive if there was jurisdiction to pronounce it. This doctrine is exemplified in probate matters in the appointment of guardians and the like. We think our conclusion is supported by principle and by the great class of cases of which The Matter of the Graduates, 11 Abb. Pr. 301, is a type.

gate and determine that question, the court exercises judicial functions, and hence its decision is a judgment or decree when entered of record. Under the settled rule that courts can only exercise judicial functions the conclusion must be either that there is no authority to proceed at all, or, that its judgment is not void. Granted the authority to proceed the necessary sequence is that the court proceeds judicially, that is, proceeds as a court. If it does so proceed, its judgment is entitled to respect. With the *res* before it, the capacity to proceed, and a right or duty to decide, the decision must, certainly, be something more than an impotent declaration or a mere collection of meaningless words. The denial that there is power in a decision in such a matter is an affirmation that the court's proceeding is idle,—in truth a mere shallow pretense—but the concession that there is vitality in it is an affirmation that it is entitled to faith and credit as the adjudication of a court.

§ 247. **Incidental jurisdiction.**—It is not necessary that the jurisdiction of a court should be given in detail in any statute nor explicitly and minutely expressed in any rule or precedent. Annexed to a principal jurisdiction there is, of necessity, incidental authority, for without such authority courts could do little if anything where there was no express statutory direction or no precedent closely fitting the precise case in hand. The old maxim that "It is the duty of a court to amplify its jurisdiction," is, at bottom, little else than a declaration of the doctrine that to the principal jurisdiction incidental authority attaches.[1] Where there is express power to perform an act, whether that power comes from the statute or the common law,

[1] It is not meant, of course, that a court can create a new jurisdiction for itself; that no court can do. Attorney General *v.* Sillem, 10 H. L. Cases, 704; United States *v.* Boisdore's Heirs, 8 How. (U. S.) 113; Schooner Constitution *v.* Woodworth, 1 Scam. (Ill.) 511; Edwards *v.* Vandemack, 13 Ill. 633; Street *v.* Francis, 3 Ohio, 277; Grover *v.* Coon, 1 N. Y. 536; McNulty *v.* Batty, 10 How. (U.S.) 72; Humphrey *v.* Chamberlain, 11 N. Y. 274. But while a court can not create a new jurisdiction it may exercise authority over incidental matters appertaining to cases over which the law extends its authority. A court can not, of course, supply *casus omissus*. *In re* Election of Executive Officers, 31 Neb. 262, S. C. 10 Lawyer's R. Anno. 803.

there is, as an incident of that power, rightful authority to do such acts as are necessary to carry the power into execution.[1] What is called ancillary or auxiliary jurisdiction is often a species of incidental jurisdiction, but, of course, not always so.[2] A right to issue an order of injunction is often incident to appellate jurisdiction, as is the right of a trial court to entertain authority over such an ancillary proceeding as an attachment against the property of a debtor. So a right to appoint a receiver may exist as an incident of the principal jurisdiction. Appellate courts often exercise jurisdiction that is intrinsically original in its nature, but is properly exercised because an incident of the principal jurisdiction of the tribunal.[3] It is to be observed that where the court is one of inferior jurisdiction, or where special statutory powers are conferred on a court of superior jurisdiction, the rule, according to the great weight of authority, is that the statute shall be strictly construed and the grant of power not extended by implication.[4] In some of the cases this doctrine is extended to an unreasonable length, but in many of them it is the *dicta* that are extravagant rather than the decision. Some of the courts in their rigid adherence to the prevailing doctrine respecting special powers of superior courts and the character of the jurisdiction of inferior tribunals utterly disregard the fundamental principle that wherever a power is given all that is necessary to make it effectual is con-

A court may, however, by analogy decide upon new questions and extend principles to new instances.

[1] Dreyfus *v.* Mayer, 69 Miss. 282, S. C. 12 So. R. 267.

[2] We do not refer to such jurisdiction as one court may exercise in aid of another, such, for instance as that which a court of equity may exercise in aid of a court of law, but we refer to such jurisdiction of an incidental nature as pertains to a principal jurisdiction residing in one tribunal.

[3] Mitcheson *v.* Foster, 3 Metcf. (Ky.) 324; Brown *v.* Caraway, 47 Miss. 668; Planters Ins. Co. *v.* Cramer, 47 Miss. 200, 206; Belew *v.* Jones, 56 Miss. 592. *Ante*, § 235.

[4] State *v.* Woodson, 41 Mo. 227; Buck *v.* Dowley, 16 Gray, 555; Morse *v.* Presby, 25 N. H. 299; Given *v.* Simpson, 5 Me. 303; Risewick *v.* Davis, 19 Md. 82; Wright *v.* Warner, 1 Doug. (Mich.) 384; Thatcher *v.* Powell, 6 Wheat. 119; People *v.* Whitney's Point, 102 N. Y. 81; Earthman *v.* Jones, 2 Yerg. 484; Shivers *v.* Wilson, 5 Har. & J. 130; Platt *v.* Stewart, 10 Mich. 260, 265; Boyd *v.* Lowry, 53 Miss. 352; Scogins *v.* Perry, 46 Tex. 111; Ball *v.* Lastinger, 71 Ga. 678; Anness *v.* Providence, 13 R. I. 17; Wil-

ferred by implication.[1] There are, however, well reasoned cases by able courts declaring that this fundamental principle will be given effect where the question concerns the jurisdiction of inferior tribunals.[2] It is true of courts of superior general jurisdiction at least, that jurisdiction may be conferred by implication,[3] and, for our part, we can see no reason why this may not be true of any court, meaning by the term "court" a judicial tribunal, having authority over a general class of cases, a record and a permanent existence.[4] In some of the cases a distinction is made between the existence of jurisdiction and the mode of its exercise,[5] but the prevailing doctrine is different. There are cases declaring, in effect, that there is no incidental jurisdiction over persons either artificial or natural in cases where a mode of securing jurisdiction different from that of the common law is prescribed by statute, and that a rigid and exact compliance with the statute is indispensably necessary to the existence of jurisdiction.[6]

lard *v.* Fralick, 31 Mich. 431; Weller *v.* Weyand, 2 Grant's Cas. 103.

[1] This general principle is illustrated by such cases as People *v.* Briggs, 50 N. Y. 553; Odell *v.* De Witt, 53 N. Y. 643; Stref *v.* Hart, 1 N. Y. 20; Mitchell *v.* Maxwell, 2 Fla. 594; *In re* Neagle, 39 Fed. R. 833, S. C. 135 U. S. 1; Witherspoon *v.* Dunlap, 1 McCord, 346; Commonwealth *v.* Conyngham, 66 Pa. St. 99; Mayor, etc., *v.* Sands, 105 N. Y. 210, 218.

[2] People *v.* Commissioners, 3 Hill, 599; Martin, *Ex parte*, L. R. 4 Q. B. Div. 212; People *v.* Hicks, 15 Barb. 153; Baltimore, etc., Co. *v.* Wilson, 2 W. Va. 528, 556; United States *v.* Wyngall, 5 Hill, 16; Matter of Oath Before Justices, 12 Coke, 130; Ellingham *v.* Mount, 43 N. J. L. 470. See, generally, Anderson *v.* Levely, 58 Md. 192; Handy *v.* Hopkins, 59 Md. 157; People v. Chapin, 105 N. Y. 309; Carpenter's Case, 14 Pa. St. 486; Matter of Canal and Walker Streets, 12 N. Y. 406; Walker *v.* Ducros, 18 La. Ann. 703.

[3] State *v.* Miller, 23 Wis. 634.

[4] *Ante*, § 154.

[5] Barrett *v.* Chitwood, 2 Bibb. 431; Russell *v.* Wheeler, Hempst. 3. See, generally, Pittsburg *v.* Walter, 69 Pa. St. 365; Pensacola *v.* Reese, 20 Fla. 437; Norwegian Street, 81 Pa. St. 349; Chollar, etc., Co. *v.* Wilson, 66 Cal. 374; Seymour *v.* Judd, 2 N. Y. 464; Childs *v.* Smith, 55 Barb. 45; People *v.* Gates, 57 Barb. 291; Bank of Monroe *v.* Widner, 11 Paige, 529; Ricard *v.* Smith, 37 Miss. 644; Dyson *v.* West, 1 Harr. & J. 567.

[6] Sayre *v.* Elyton, etc., Co., 73 Ala. 85; Bradley *v.* Jamison, 46 Iowa, 68; Scorpion, etc., Co. *v.* Marsano, 10 Nev. 370; Pollard *v.* Wegener, 13 Wis. 569; Stewart *v.* Stringer, 41 Mo. 400; Brown *v.* Tucker, 7 Colo. 30; Hartford Fire Ins. Co. *v.* Owen, 30 Mich. 441; Jordan *v.* Giblin, 12 Cal. 100; Ricketson *v.* Richardson, 26 Cal. 149; Gray *v.* Larimore, 2 Abb. (U. S.) 542; Granger *v.* Judge, 44 Mich. 384. Other courts have declared a more

§ 248. **Acquisition of jurisdiction—Conflict of authority.**—In accordance with the rule stated elsewhere,[1] that one court will not interfere with the proceedings or process of another, the doctrine is settled that where there is concurrent jurisdiction the court which first acquires jurisdiction will retain it to the exclusion of all other tribunals.[2] This general doctrine does not, of course, prevent courts of equity from interfering in cases where there is an equitable right to be enforced by means of an equitable remedy, for the doctrine applies only where the courts are of co-ordinate jurisdiction.[3] A suit or action is not always ended when a judgment is entered, for the authority of the court still continues, to the exclusion of other tribunals, until all incidental matters connected with the issuing and execution of process are finally disposed of in due course of law.[4] It is true, of course, that jurisdiction of the

liberal rule as in favor of the action of the court, as Goodell *v.* Starr, 127 Ind. 198; Essig *v.* Lower, 120 Ind. 239; Quarl *v.* Abbett, 102 Ind. 233, S. C. 52 Am. R. 662; Field *v.* Malone, 102 Ind. 251; Fahs *v.* Darling, 82 Ill. 142, 145; Lessee of Boswell, 15 Ohio, 447, 467; Hahn *v.* Kelley, 34 Cal. 391, S. C. 94 Am. Dec. 742; Jones *v.* Driskill, 94 Mo. 190, S. C. 7 S. W. R. 111. We can see no reason for holding proceedings absolutely void where there is an affidavit and publication made although there may be errors and defects both in the affidavit and the notice. If there is a sufficient affidavit and notice to require the court to investigate and decide, its decision ought upon principle and authority to protect the proceedings against a collateral attack. See *ante*, § 183, *post*, § 262.

[1] *Ante*, § 193.

[2] Chapin *v.* James, 11 R. I. 86, S. C. 23 Am. R. 412; Wethers *v.* Denmead, 22 Md. 143, 145; Mapes *v.* People, 60 Ill. 523; Tylor *v.* Taintor, 16 Wall. 370; Western U. Tel. Co. *v.* Phillips, 21 S. W. R. 638; Insurance Co. *v.* University, 6 Fed. R. 443; Insurance Co. *v.* Howell, 24 N. J. E. 238; Sharon *v.* Terry, 36 Fed. R. 337; Stearns *v.* Stearns, 16 Mass. 167; Powers *v.* City Councils, etc., 116 Mass. 84; Seibel *v.* Simeon, 62 Mo. 255; Thompson *v.* Hill, 3 Yerg. 167; Payne *v.* Drewe, 4 East, 523.

[3] Gould *v.* Hayes, 19 Ala. 438; Uhlfelder *v.* Levy, 9 Cal. 607.

[4] For many purposes a case is considered as pending as long as there may be necessity for process, or for judicial action although there may have been a decree or judgment. Wegman *v.* Childs, 41 N.Y. 159; Mann *v.* Blount, 65 N. Car. 99, 101; Howell *v.* Bowers, 2 Cromp. Mees. & R. 621; Spann *v.* Spann, 2 Hill's Ch. 152. See, generally, O'Malley *v.* Reese, 1 Barb. 643; Dresser *v.* Van Pelt, 15 How. Pr. R. 19; Bank of Genesee *v.* Spencer, 15 How. Pr. R. 412; Gould *v.* Torrance, 19 How. Pr. R. 560. In Wayman *v.* Southard, 10 Wheat. 1, it was said by Chief Justice Marshall that, "The jurisdiction of a court is not exhausted by the rendition of a judgment, but

person and of the subject must be acquired substantially in the mode prescribed by law, but in asserting that jurisdiction must be thus acquired, there is no affirmation that jurisdiction may not in many instances be conferred by express or implied agreement. Where it is competent to confer jurisdiction by consent, there may be a waiver of all jurisdictional objections. Where there is an effective agreement, either express or implied, giving jurisdiction, then the acquisition is in the mode the law prescribes. Consent can not confer jurisdiction of the general subject, but facts may be admitted which enable the court to rightfully assume jurisdiction.[1]

§ 249. **Retaining jurisdiction once acquired.**—Where a court once acquires jurisdiction it will retain it although it may become necessary to decide questions which in strictness belong to another court or to grant relief that can be more appropriately granted by courts of a different class.[2] This rule is necessary in order to prevent the dissection of causes into fragments and the distribution of one part to one court and another part to another court.[3] The policy of the law is to avoid the

continues until that judgment shall be satisfied. Many questions arise on the process subsequent to the judgment, in which jurisdiction is to be exercised." See Hawes *v.* Orr, 10 Bush (Ky.), 431; Anthony *v.* Dunlap, 8 Cal. 26.

[1] "Consent of parties," it was said in Railway Co. *v.* Ramsey, 22 Wall. 322, 327, "can not give the courts of the United States jurisdiction, but parties may admit the existence of facts which show jurisdiction, and the court may act judicially upon such admission." See, also, Thornton *v.* Baker, 15 R. I. 553, S. C. 2 Am. St. R. 925; Ela *v.* McConihe, 35 N. H. 279; Hines *v.* Mullins, 25 Ga. 696; Brown *v.* Haines, 12 Ohio, 1; Mandeville *v.* Mandeville, 35 Ga. 243; Harbin *v.* Bell, 54 Ala. 389; Turner *v.* Billagram, 2 Cal. 520; Maltimore *v.* Maltimore, 40 Pa. St. 151; Potter *v.* Adams Ex., 24 Mo. 159; Lovelady *v.* Davis, 33 Miss. 577.

[2] What was said in Barton *v.* Saunders, 16 Ore. 51, S. C. 8 Am. St. R. 261, although not addressed to the phase of the subject here under immediate discussion, is a good statement of the general doctrine. "It is an elementary principle," said the court, "that where a court of justice acquires jurisdiction over the subject-matter and the person, it becomes its right and duty to determine every question which may arise in the cause without interference from any other tribunal."

[3] Henderson *v.* Henderson, 3 Hare's Ch. 100, 115; Indiana, etc., *v.* Koons, 105 Ind. 507. See, generally, Thomas *v.* Joslin, 36 Minn. 1, S. C. 1 Am. St. R. 624; Hentig *v.* Redden, 46 Kan. 231, S. C. 26 Am. R. 91; Parnell *v.*

splitting of demands as well as the dissection of cases into parts.[1] It is obvious that the trial of cases piecemeal would result in great evil for it might happen that one part of a controversy would be in one tribunal and another part in another court, so that there might be diverse decisions in the same case. The most familiar, and, perhaps, the most distinct enunciation of the general doctrine is that of the courts of equity, for the rule has often been enforced by those courts.[2]

§ 250. **Authority of sovereignty over property within its territory.**—The basis upon which ultimately rests the jurisdiction of the courts of a State or nation over property within its territorial limit is that of the power of the sovereign over the property. The source of judicial power is, it is evident, not

Hahn, 61 Cal. 131; Phelan *v.* Gardiner, 43 Cal. 306; Minor *v.* Hill, 58 Ind. 176, S. C. 26 Am. R. 71; Colton *v.* Onderdonk, 69 Cal. 155; Denegre *v.* Denegre, 33 La. Ann. 689; Jenkins *v.* Nolan, 79 Ga. 295; Fouche *v.* Harrison, 78 Ga. 359; Stewart *v.* Montgomery, 23 Pa. St. 401.

[1] Guernsey *v.* Carver, 8 Wend. 492, S. C. 24 Am. Dec. 60; Brannenberg *v.* Indianapolis, etc., 13 Ind. 103; Ingraham *v.* Hall, 11 Serg. & R. 78; Turner *v.* Plowden, 2 Gill. & J. 455, S. C. 23 Am. Dec. 596; Dutton *v.* Shaw, 35 Mich. 431; Marsh *v.* Pier, 4 Rawle, 273, S. C. 26 Am. Dec. 131; Warren *v.* Comings, 6 Cush. 103; Wittick *v.* Traum, 27 Ala. 562, S. C. 62 Am. Dec. 778. But the rule against splitting demands does not, of course, apply where there are distinct and independent claims. Whittier *v.* Collins, 15 R. I. 90, S. C. 2 Am. St. R. 879; Byrnes *v.* Byrnes, 102 N. Y. 4; Gilman, etc., *v.* Foote, 22 Iowa, 560.

[2] Mr. Pomeroy thus states the rule: "Where a court of equity has obtained jurisdiction of some portion or feature of a controversy it may, and will in general, proceed to decide the whole case, and to award complete relief, although the rights of the party are strictly legal, and the final relief granted is of the kind which might be conferred by a court of law." 1 Pomeroy Eq., § 231. At another place he says: "A suit in equity must include the entire transaction, the plaintiff can not divide it and sue in equity for a part and at law for a part." *Ibid*, § 181, note. The cases sustaining the general doctrine are very numerous, among them are Feder *v.* Field, 117 Ind. 386; Notama, etc., Co. *v.* Clarkin, 14 Cal. 544; More *v.* Massini, 32 Cal. 590; Oelrichs *v.* Spain, 15 Wall. 211; Hamilton *v.* Cummings, 1 Johns. Ch. 517; Crane *v.* Bunnell, 10 Paige, 333; Billups *v.* Sears, 5 Gratt. 31; Corporation of Carlisle *v.* Wilson, 13 Vesey, 276; Martin *v.* Tidwell, 36 Ga. 332, 345; Franklin Ins. Co. *v.* McCrea, 4 Greene (Iowa), 229; Corly *v.* Bean, 44 Mo. 379; People *v.* Chicago, 53 Ill. 424; Carlisle *v.* Cooper, 21 N. J. Eq. 576; Sanborn *v.* Kittredge, 20 Vt. 632.

greater in any respect than the government of which it constitutes one of the departments. That the sovereign power may regulate the transfer and use of real property within the domain over which the power extends is clear and undoubted. No other power can control that property.[1] Personal property within the dominion of the sovereignty is subject to its laws, and, therefore, bound by the judgments and decrees of its judicial tribunals.[2] A legal fiction is in some cases recognized which gives the *situs* of the owner as that of the property, but this fiction yields where justice demands,[3] and is not finding favor with the courts. The many cases in which it has been adjudged that property of a non-resident may be seized under a writ of attachment issued by the court of the State in which the property is situated show of how little practical value the legal fiction is, and what a slender effect it has in legal proceedings.[4]

§ 251. **Territorial jurisdiction of courts.**—The territorial jurisdiction exercised by the American courts is prescribed by written laws and these laws define the geographical limits within which the courts may rightfully act. It is, however, a fundamental rule that no State court can have jurisdiction

[1] Story on Conflict of Laws, § 552. See, also, Watts *v.* Waddle, 6 Pet. 389; French *v.* Hay, 22 Wall. 231; McBride *v.* Harn, 48 Iowa, 151.

[2] Clark *v.* Tarbell, 58 N. H. 88; Milne *v.* Moreton, 6 Binney, 353; Bissell *v.* Briggs, 9 Mass. 462; Stringer *v.* Insurance Co., L. R., 4 Q. B. 676; Street *v.* Insurance Co., 12 Rich (So. Car.), 13.

[3] Ames Iron Works *v.* Warren, 76 Ind. 512, S. C. 40 Am. R. 258; New *v.* Walker, 108 Ind. 365, 368; Tod *v.* Wick, 36 Ohio St. 370; Haskell *v.* Jones, 86 Pa. St. 173; Green *v.* Van Buskirk, 7 Wall. 139; Hardaway *v.* Semmes, 38 Ala. 657. See, generally, Castrique *v.* Imrie, L. R., 4 H. L. 414.

[4] Molyneux *v.* Seymour, etc., Co., 30 Ga. 440, S. C. 76 Am. Dec. 662, note. Dr. Wharton says of the fiction that it is "gradually vanishing from the field of practical jurisprudence." See, upon the general subject, Herver *v.* Rhode Island, etc., Works, 93 U. S. 664; *Ex parte* Dickinson, 29 S. Car. 453, S. C. 13 Am. St. R. 749; Warner *v.* Jaffray, 96 N. Y. 248; Pierce *v.* O'Brien, 129 Mass. 314, S. C. 37 Am. R. 360; Paine *v.* Lester, 44 Conn. 196, S. C. 26 Am. R. 442; Moore *v.* Church, 70 Iowa, 208, S. C. 59 Am. R. 439; Stricker *v.* Tinkham, 35 Ga. 176, S. C. 89 Am. Dec. 280; Mason *v.* Stricker, 37 Ga. 262; Butler *v.* Wendell, 57 Mich. 62, S. C. 58 Am. R. 329; Hibernia Bank *v.* Lacombe, 84 N. Y. 367, S. C. 38 Am. R. 518.

beyond the limits of the State of its creation.[1] The Federal trial courts have their districts prescribed by written laws and their authority must be exercised within the territory over which they are given authority. But while the territorial jurisdiction of the courts is fixed by positive laws, still there are rules of the common law which are called to the aid of such statutes. The jurisdiction of the State courts of general jurisdiction is often limited to counties, and where so limited no trial can be rightfully conducted beyond the limited territory.[2] There may be courts of concurrent jurisdiction within the same territorial limits, and there may be courts of different sovereignties, as, for instance, the Federal and State courts exercising powers and functions within the same territory.[3] Where the jurisdiction of a court is limited to a designated county, it can not, as we have said, rightfully conduct a trial in any other county, and, according to some of the cases, a trial

[1] Booth *v.* Clark, 17 How. (U. S.) 321; Watkins *v.* Holman, 16 Pet. 25; Phelps *v.* Brewer, 9 Cush. 390, S. C. 57 Am. Dec. 56; Lovejoy *v.* Albee, 33 Me. 414, S. C. 54 Am. Dec. 630; McVicker *v.* Beedy, 31 Me. 314, S. C. 50 Am. Dec. 666; Dearing *v.* Bank, 5 Ga. 497, S. C. 48 Am. Dec. 300; Welch *v.* Sykes, 3 Gil. 197, S. C. 44 Am. Dec. 689; De Witt *v.* Burnett, 3 Barb. 89; Gilbreath *v.* Bunce, 65 Mo. 350; Wimer *v.* Wimer, 82 Va. 890, S. C. 3 Am. St. R. 126.

[2] We restrict our statement to trials for the reason that in most of the States provision is made for the execution of final process beyond the limits of the territorial jurisdiction of the court. It is true of State trial courts, as a general rule, that their territorial limits are laid off into circuits, districts, or the like, and that these circuits or districts are usually composed of geographical divisions called counties, but, as a rule, provision is made for holding terms of court in each county of the circuit or district, and where this is done trials must be conducted in the designated county and not elsewhere in the circuit or district.

[3] While the Federal courts exercise powers and functions within the same territory, the jurisdictions are independent and distinct, for the tribunals are, in legal contemplation, the creations of different sovereignties. United States *v.* Cruikshank, 92 U. S. 542; Tarble Cases, 13 Wall. 397; Ableman *v.* Booth, 21 How. (U. S.) 506; License Cases, 5 How. (U. S.) 504. There are some cases, of course, in which the jurisdiction of the Federal tribunal is exclusive, as patent cases proper, copyright cases, and other cases where the questions are, in the strict sense, Federal questions. Armstrong *v.* Ettlesohn, 36 Fed. R. 209; Ames *v.* Hager, 36 Fed. R. 129. See, generally, *In re* Loney, 134 U. S. 372; Clark *v.* Bever, 139 U. S. 96. As to matters affecting interests in patents, as suits

in any county other than that designated is a nullity.[1] There is, as it seems to us, much reason for holding that a trial in the wrong county is never void where there is jurisdiction of the general class of cases and jurisdiction of the person, but the weight of authority is different, for it is generally held, as we have elsewhere shown,[2] that there must be jurisdiction of the particular subject.

§ 252. **Local actions.**—The general rule is that actions affecting the title to land, to recover possession thereof and to recover for injuries thereto must be brought in the county in which the land lies. These actions are local and the venue is to be laid in the county where the land is situated.[3] The tendency of the decisions is to enlarge the rule that prevailed at common law and place in the class of local actions all actions that in any wise concern the possession of land, the estate therein or injuries thereto. This is shown by many of the cases to which we have referred in the note, and is shown by decisions in other cases. Thus actions for injuries to land

for specific performance and the like, see Marsh *v.* Nichols, 140 U. S. 344; Dale Tile Co. *v.* Hyatt, 125 U. S. 46; Felix *v.* Scharnweber, 125 U. S. 54; Reeves *v.* Corning, 51 Fed. R. 774; New *v.* Walker, 108 Ind. 365.

[1] *Ex parte* Gibson, 89 Ala. 174, S. C. 7 S. R. 833; Hill *v.* Taylor, 50 Mich. 549, S. C. 15 N. W. R. 899; *Ex parte* McGrew, 40 Texas, 472, 474; Chapman *v.* Morgan, 2 G. Greene, 374; Boyer *v.* Moore, 42 Iowa, 544; McMeans *v.* Cameron, 51 Iowa, 691. See, generally, Carroll *v.* Langan, 18 N. Y. Supp. 290; *In re* Kamaha, 2 Hawaiian, 444; *Ex parte* Edgington, 10 Nev. 215, 217; Pearce *v.* Atwood, 13 Mass. 324; Gates *v.* Wagner, 46 Iowa, 355.

[2] §§ 238, 239.

[3] Thompson *v.* Locke, 66 Texas, 383; Bent *v.* Maxwell, 3 New Mex. 158, S. C. 3 Pac. R. 721; Kipp *v.* Cook, 46 Minn. 535, S. C. 49 N. W. R. 257; Thorn *v.* Maurer, 85 Mich. 569, S. C. 48 N. W. R. 640; Urton *v.* Woolsey, 87 Cal. 38, S. C. 25 Pac. R. 154; Norce *v.* Richmond, etc., Co., 33 Fed. R. 469; Atkins *v.* Wabash, etc., Co., 29 Fed. R. 161; Orcutt *v.* Hanson, 71 Iowa, 514, S. C. 32 N. W. R. 482; Coryell *v.* Linthecum (Texas), 11 S. W. R. 1092; Freeman *v.* Thomson, 50 Hun, 340; Drinkhouse *v.* Spring Valley, etc., Co., 80 Cal. 308, S. C. 22 Pac. R. 252; Horne *v.* Buffalo, etc., Co., 49 Hun, 76; Marcum *v.* Powers (Ky.), 9 S. W. R. 255; Baker *v.* Fireman's Fund, 73 Cal. 182, S. C. 14 Pac. R. 686; Meehan *v.* Edwards (Ky.), 18 S. W. R. 519; McLaughlin *v.* McCrory, 55 Ark. 442, S. C. 18 S. W. R. 762; Fritts *v.* Camp, 94 Cal. 393, S. C. 29 Pac. R. 867; Norfolk, etc., Co. *v.* Postal, etc., Co., 88 Va. 920, 929, S. C. 14 S. E. R. 689, 690, 691; Cox *v.* Little Rock, etc., Co., 55 Ark. 454, S. C. 18 S. W. R. 630; Bennett *v.* McIntire, 121 Ind. 231.

from fires communicated by locomotives are held to be local.[1] So, as it has been held, an action to collect a drainage assessment is local and must be brought in the county where the land assessed is located.[2] In another case it was held that where a trustee sought relief on the ground that the judgments assailed wrongfully preferred creditors and were apparent liens upon land, the jurisdiction was in the county where the land was located.[3] Where a suit involves the existence of a resulting trust in land the action is regarded as local.[4] The general doctrine is carried very far by many of the cases, for it is held that if a local action is brought in the wrong county all the proceedings are void, no matter what the defendant may do. We can not yield to the extreme view asserted by many of the courts. We do not doubt that where objection is seasonably and properly made the error in bringing the action in the wrong county will be fatal, nor do we doubt, that, if there is no opportunity to defend, the proceedings will be void. We do, however, believe that where there is jurisdiction of the general class of cases, as, for instance, of actions for injuries to real estate, and the defendant appears and contests the claim of the plaintiff without making any objection to the jurisdiction, the judgment rendered in the particular case is not void. If a railway company sued in the wrong county for injuries to land by fire communicated by its locomotives appears and contests the case on its merits it certainly can not, on principle, be permitted to subsequently aver that the judgment is a mere nullity. So, if a land owner brings an action for overflowing his land against a mill owner in the county where the latter resides and not in the county where the land is situated, the judgment rendered would not, in our opinion, be assailable in a

[1] Indiana, etc., Co. *v.* Foster, 107 Ind. 430.

[2] Dowden *v.* State, 106 Ind. 157.

[3] Sweetser *v.* Smith, 22 Abbott N. C. 319, S. C. 5 N. Y. Supp. 378.

[4] Appeal of Hays, 123 Pa. St. 110, S. C. 16 Atl. R. 600. See, generally, Spalding *v.* Kelly, 66 Mich. 693; State *v.* Crevier, 50 N. J. L. 351; Tillotson *v.* Pritchard, 60 Vt. 94; New Home, etc., Co. *v.* Wray, 28 S. Car. 86; Territory *v.* Judge, 5 Dak. 275; Sloss *v.* De Toro, 77 Cal. 129; Franklin *v.* Dutton, 79 Cal. 605, S. C. 21 Pac. R. 964.

collateral proceeding. In the cases we have adduced by way of illustration we think the right to object to the jurisdiction of the particular subject may be waived. If a plaintiff invokes the jurisdiction of a court in one of a general class of cases over which it has jurisdiction plain principles of equity would estop him from averring that in the particular instance there was no jurisdiction, and, as the principle of estoppel is reciprocal, we can see no reason why a defendant who consents to try the case on its merits, although in the wrong county, may not be held to have waived all objections to the jurisdiction. Here, again, we come to what the writers conceive to be an error in the generally accepted classification of the different kinds of jurisdiction and that error, as we have elsewhere endeavored to show, is in blending in one division the two species, jurisdiction of the general subject, and jurisdiction of the particular subject. We believe that in the one species there can be no waiver and in the other that there may be a waiver by agreement. Our position is not in the least weakened by the well established doctrine that the courts of one State can not give judgment for possession of lands in another State, or for damages arising from injuries to such lands.[1] The doctrine to which we have just referred does not conflict with our views, for the reason that no State or its instrumentalities can have power within the domains of another sovereign. Within the territorial limits of its own State a court may unquestionably exercise jurisdiction by agreement of parties in many particular instances where if objection be made a different proceeding than that adopted by the agreement of the parties must be pursued. We do not, of course, assert that where there is no jurisdiction of the general class of cases, consent may confer it; on the contrary, we assume as the basis of our position that there is jurisdiction of the general class. This leaves only the

[1] Allin *v.* Connecticut, etc., Co., 150 Mass. 560, S. C. 6 Lawy. Rep. Anno. 416; Eachus *v.* Trustees, 17 Ill. 534; Du Breuil *v.* Pennsylvania Co., 130 Ind. 137; Dodge *v.* Colby, 108 N. Y. 445; American, etc., Co. *v.* Middleton, 80 N. Y. 408; Cragin *v.* Lovell, 88 N. Y. 258; McKenna *v.* Fisk, 1 How. (U. S.) 241; Champion *v.* Doughty, 18 N. J. L. 3.

question of the right to exercise that general jurisdiction in a particular instance where the parties agree that it may be exercised. In penal actions and criminal prosecutions jurisdiction depends in a great degree upon locality, and, as a rule, such actions and prosecutions must be conducted in the county where the penal act was performed or the crime committed.[1] Each State has exclusive power to punish offenders for a violation of its penal or criminal laws, and prosecutions are necessarily local, since such laws have no extra-territorial effect,[2] but it is stated by some of the authorities that a crime against a nation may be punished although not committed within its territory.[3] The general doctrine is that where a nation's flag is the emblem and representative of authority the nation has power to prosecute and punish offenders against its laws. This rule confers a right to prosecute and convict the violators of law in cases where the crime is committed upon the high seas.[4] While it is true as a general rule that each government must enforce its own criminal laws yet it is held that a State may inflict punishment for a crime defined by its own laws and also

[1] State *v.* Howard, 31 Vt. 414, 415; State *v.* Hatch, 91 Mo. 568, S. C. 4 S. W. R. 502; State *v.* Knapp, 40 Kan. 148, S. C. 19 Pac. R. 728; Landa *v.* State, 26 Texas App. 580, S. C. 10 S. W. R. 218; State *v.* McCoy, 42 La. Ann. 228, S. C. 7 S. R. 330; Nichols *v.* State, 28 Texas App. 105, S. C. 12 S. W. R. 500; Fisher *v.* Ballard, 109 N. Car. 574, S. C. 13 S. E. R. 799; Conner *v.* State, 29 Fla. 455, S. C. 10 S. R. 891; Watt *v.* People, 126 Ill. 9, S. C. 1 Lawy. Rep. Ann. 403; Sims *v.* State, 28 Texas App. 447, S. C. 13 S. W. R. 653; State *v.* Rider, 46 Kan. 332, S. C. 26 Pac. R. 745.

[2] National Bank *v.* Price, 33 Md. 487; Bettys *v.* Railway Co., 37 Wis. 323. See, generally, Warrander *v.* Warrender, 9 Bligh, 89; Sims *v.* Sims, 75 N. Y. 466; Commonwealth *v.* Green, 17 Mass. 515; Chase *v.* Blodgett, 10 N. H. 22; State *v.* Chandler, 3 Hawks, 393; People *v.* Kelley, 38 Cal. 138, 140; Corfield *v.* Coryell, 4 Wash. C. C. 371, 382; United States *v.* Bevans, 3 Wheat. 336; United States *v.* Grush, 5 Mason, 290; United States *v.* Wiltberger, 5 Wheat. 76; State *v.* Carter, 3 Dutch. 499.

[3] 1 Wharton's Crim. Law, § 1862, citing Bollman *ex parte*, 4 Cranch, 75; United States *v.* Magill, 1 Wash. C. C. 463; United States *v.* Thompson, 1 Sumn. 168.

[4] The Marianna Flora, 11 Wheat. 1; United States *v.* Pirates, 5 Wheat. 194; Rex *v.* Allen, 1 Moody, C. C. 494; Rex *v.* Allen, 7 Car. & P. 664; United States *v.* Gordon, 5 Blatch. 18; United States *v.* Ross, 1 Gall, 624; United States *v.* Stevens, 4 Wash. 547.

by those of the United States.[1] A familiar illustration of this doctrine is supplied by the cases which hold that the States may enact laws for the punishment of persons who counterfeit the coin of the national government. Where the offense is defined exclusively by the Federal laws and is not defined by State laws the jurisdiction to punish is in the Federal courts.[2] The rule that territorial jurisdiction of a penal action or a criminal prosecution is in the county where the offense was committed does not require that the entire transaction or acts constituting the offense should be committed in one county; on the contrary, jurisdiction may exist in a county where one of the constituent parts of the offense was committed although parts of the same offense were committed in some other county, or, indeed, even in some other State.[3] It has been held that in

[1] Hancock *v.* Yaden, 121 Ind. 366, 374; Sizemore *v.* State, 3 Head. 26; People *v.* White, 34 Cal. 183; Fox *v.* State, 5 How. 410; United States *v.* Field, 16 Fed. R. 778; Chess *v.* State, 1 Blackf. 198; Snoddy *v.* Howard, 51 Ind. 411. See, generally, State *v.* McPherson, 9 Iowa, 53; Moore *v.* People, 14 How. 17, 18; State *v.* Brown, 2 Ore. 221; Commonwealth *v.* Tenney, 97 Mass. 50; Jett's Case, 18 Gratt. 933. It is to be observed that in the class of cases under immediate consideration the State does not assume to enforce the laws of the nation, for it does no more than enforce its own laws. The laws are cumulative in a certain sense, but they are, nevertheless, the laws of separate sovereignties. See, upon the general subject, Commonwealth *v.* Felton, 101 Mass. 204; Commonwealth *v.* Tenney, 97 Mass. 50; Commonwealth *v.* Barry, 116 Mass. 1; State *v.* Tuller, 34 Conn. 280; Ely *v.* Peck, 7 Conn. 239; Commonwealth *v.* Carpenter, 100 Mass. 204.

[2] Bridges, *ex parte*, 2 Woods, 428; Brown *v.* United States, 14 Am. Law Reg. (N. S.) 566; State *v.* Shelley, 11 Lea. 594; People *v.* Sweetman, 3 Parker, C. R. 358; State *v.* Adams, 4 Blackf. 146; State *v.* Kirkpatrick, 32 Ark. 117.

[3] Archer *v.* State, 106 Ind. 426; Green *v.* State, 66 Ala. 40, S. C. 41 Am. R. 744; Commonwealth *v.* Holder, 9 Gray, 7; Tipping *v.* State, 14 Ga. 422; Tyler *v.* People, 8 Mich. 320; People *v.* Dimick, 107 N. Y. 13; Mack *v.* People, 82 N. Y. 235; Commonwealth *v.* White, 123 Mass. 430; People *v.* Williams, 24 Mich. 156, S. C. 9 Am. R. 119; State *v.* Pauley, 12 Wis. 537; Commonwealth *v.* Costley, 118 Mass. 16, 26; State *v.* Ward, 49 Conn. 429; Beal *v.* State, 15 Ind. 378; State *v.* Bartlett, 11 Vt. 650; Massie *v.* Commonwealth, 90 Ky. 485, S. C. 14 S. W. R. 419; *In re* Kelly, 46 Fed. R. 653; State *v.* Underwood, 49 Me. 181; Steerman *v.* State, 10 Mo. 503; State *v.* Kreichbaum, 81 Iowa, 633, S. C. 47 N. W. R. 872. See, generally, "Crimes—Their jurisdiction as affected by county lines," 24 Cent. C. J. 7; Jurisdiction in Guiteau's Case, 2 Crim. Law Mag. 804; Lancaster *v.* State, 91 Tenn. 267, S. C. 18 S. W. R. 777; State *v.* Denton, 6 Cold. (Tenn.), 539; Stan-

actions to enforce penalties given by statute there is no constitutional right to a trial by jury in the county where the offense was committed, and that the legislature may, therefore, rightfully provide for a trial in some other county,[1] but this does not imply that an action to recover a penalty inflicted by way of punishment is not in its nature local, for all that is decided is that the territorial jurisdiction may be designated by the legislature inasmuch as there is no constitutional provision interdicting the exercise of that power by the legislative department. The boundaries of a county so far at least as concerns the jurisdiction to punish for crime may extend to the middle thread of a river forming the boundary line between two States.[2] Where the place at which a crime is committed is not within a State but is within the United States the jurisdiction is in the Federal courts.[3] In civil proceedings, as is evident from what has been said and the authorities to which reference has been made, the jurisdiction considered upon its territorial side is, to a great degree, determined by locality of the property in controversy, but as respects personal property the rule is essentially different from that which prevails where the subject of the dispute is land, for actions regarding personal property are, as a rule, not local but transitory.

§ 253. **Transitory actions.**—An action is usually regarded

ley *v.* State, 24 Ohio St. 166, S. C. 15 Am. R. 604; Hutchinson *v.* State, 62 Ind. 556; State *v.* McGraw, 87 Mo. 161; State *v.* Moore, 26 N. H. 448, S. C. 59 Am. Dec. 354.

[1] People *v.* Rouse, 15 N.Y. Supp. 414. An action to recover a penalty is regarded as a civil action and not a criminal prosecution. Durham *v.* State, 117 Ind. 477; United States *v.* Hoskins, 5 Mackey (D. C.), 478; 1 Bishop Crim. Law, § 956.

[2] Dugan *v.* State, 125 Ind. 130, S. C. 9 Lawy. R. Anno. 321; Welsh *v.* State, 126 Ind. 71, 75; Carlisle *v.* State, 32 Ind. 55.

[3] Cook *v.* United States, 138 U. S. 157, S. C. 11 Sup. Ct. R. 268. In the case cited the court quoted with approval from the opinion in United States *v.* Jackalow, 1 Black, 484, the following: "Crimes committed against the laws of the United States out of the limits of a State are not local, but may be tried at such place as congress shall designate by law, but are local if committed within the State. They must then be tried in the district in which the offense was committed." See, also, United States *v.* Dawson, 15 How. (U. S.) 467; Jones *v.* United States, 137 U. S. 202.

as transitory when the transaction out of which it grows or the occurrence upon which it is founded is one that might have taken place anywhere.[1] The nature of the relief, however, exerts an important influence upon the character of the suit or action, for, as many of the authorities cited in the preceding paragraph show, where the right to land or to some interest therein is the relief sought the suit or action is local and not transitory. It is evident that the class denominated transitory actions is a very large one inasmuch as almost all personal actions are members of the class. Actions to enforce contracts, to recover damages for a breach of contract, and almost all actions concerning personal property are transitory.[2] Whether an action is local or transitory depends to a very great extent upon the statutes of the different States. In some of the States an action of replevin is made a local action, in others it is transitory. In some of the States actions on official bonds are made local, and so are many other actions. Where there is no constitutional provision limiting the legislative power, actions

[1] Mostyn *v.* Fabrigas, 1 Cowp. 161, S. C. 1 Smith's Lead. Cases, 652. In a note to this case Mr. Smith says: "There is a formal and substantial distinction as to the locality of trials. I state them as different things. The substantial distinction is where the proceeding is *in rem*, and where the effect of the judgment can not be had if it is laid in a wrong place. That is the case of all ejectments where the possession is to be delivered by the sheriff of the county, and, as trials in England are in particular counties, the officers are county officers, therefore the judgment could not have effect if the action was not laid in the proper county."

[2] It is not necessary to give many of the vast number of cases upon this subject and we cite only a few illustrative cases. Austin *v.* Cameron, 83 Tex. 351, S. C. 18 S. W. R. 437; Focke *v.* Blum, 82 Tex. 436, S. C. 17 S. W. R. 770; Commercial Bank *v.* Davidson, 18 Ore. 57, S. C. 22 Pac. R. 517; Carlisle *v.* Cowan, 85 Tenn. 165, S. C. 2 S. W. R. 26; Newell *v.* Giggey, 13 Colo. 16, S. C. 21 Pac. R. 904; Lipscomb *v.* Tanner, 31 S. Car. 49, S. C. 9 S. E. R. 733; Flynn *v.* Central, etc., Co., 27 Abb. N. Cases, 31; Essenwine *v.* Pennsylvania Co., 25 W. L. Bull. 396; Nonce *v.* Richmond, etc., Co., 33 Fed. R. 429; Houston *v.* Vicksburg, etc., Co., 39 La. Ann. 796, S. C. 2 S. R. 562; Jones *v.* Pemberton, 7 N. J. L. 350; Glen *v.* Hodges, 9 Johns. 67; Gardiner *v.* Thomas, 14 Johns. 134; Shaver *v.* White, 6 Munf. 110; Lienow *v.* Ellis, 6 Mass. 331; Birney *v.* Haim, 2 Litt. (Ky.) 263; Northern, etc., Co. *v.* Scholl, 16 Md. 331; Redgrave *v.* Jones, 1 Har. & M. 195; Williams *v.* Burnett, 6 T. B. Monr. 322; Lewis *v.* Morton, 5 T. B. Monr. 1; Livingston *v.* Jefferson, 1 Brock, 203; Illinois, etc., Co. *v.* Swearingen, 33 Ill. 289.

may be made local or transitory at the pleasure of the legislature. In the absence of statutory rules those of the common law, so far as applicable to our system of procedure, are followed, and in the interpretation of statutes the common law is influential. Statutes respecting the venue are regarded as remedial, and when intended to promote the convenience of suitors and parties are liberally construed.[1]

§ 254. **Domicile as affecting jurisdiction.**—The domicile of a person is often an influential factor in matters of jurisdiction. The law of the domicile of a party governs the jurisdiction of the courts as to him when a party to a suit or action in a court of the State of his domicile. As to such persons the legislature may, within constitutional limits, prescribe the mode of service of notice and the like.[2] But where a party is domiciled in another State a different rule applies.[3] In actions or suits in the Federal courts the question of domicile is often a very important one, for in a large class of cases, as is well known, the jurisdiction depends upon the fact that there is a diversity of citizenship.[4] As we have seen, residence or domicile is the basis of

[1] Quinn *v.* Fidelity Association, 100 Pa. St. 382. See, generally, Hoguet *v.* Wallace, 28 N. J. L. 523; Guffin *v.* Leslie, 20 Md. 15; Mitchell *v.* Mitchell, 1 Gill, 66; Smith *v.* Moffatt, 1 Barb. 65; Simonton *v.* Barrell, 21 Wend. 362; Sprowl *v.* Lawrence, 33 Ala. 674; Holmes *v.* Carley, 31 N. Y. 289.

[2] Mr. Freeman says: "The position, however, which seems to be best sustained, both by reason and by precedents, is, that each State has the authority to provide the means by which its own citizens may be brought before its courts; that the courts of other States have no authority to disregard the means thus provided; and, finally, that every judgment or decree obtained in a State against some of its citizens, by virtue of a lawful, though constructive service of process, should be as obligatory upon such citizen in every other State as it is in the State whence it is taken. Nor is it destructive of the extra-territorial effect of a judgment based on constructive service that the defendant, being a citizen of the State, was temporarily absent therefrom. It is sufficient that he was, at the time, subject to the laws of the State and to the territorial authority of the court." Freeman on Judgments (4th ed.), § 570.

[3] We refer, we may say, by way of explanation, to cases different and distinct from those in which a resident of one jurisdiction comes into another.

[4] Barber *v.* Barber, 21 How. (U. S.) 582; Prentiss *v.* Barton, 1 Brock, 389; Catlin *v.* Gladding, 4 Mason, 308; Briggs *v.* French, 2 Sumn. 251; Butler *v.* Farnsworth, 4 Wash. C. C. 101; Kemna

jurisdiction in divorce proceedings. It is often a controlling factor in problems growing out of the assertion of authority of the courts of the State wherein the party is domiciled. In contemplation of law every person must have a domicile somewhere,[1] and, as it is generally held, until a domicile is elsewhere acquired a party retains that of his origin.[2] The words "domicile" and "residence" are usually regarded as synonymous terms,[3] so that when a statute employs the term "residence" it is ordinarily understood as meaning the place of residence. The question of the change of domicile is, in the main, one of fact, but with matters of fact mingle matters of law, so that the question is ordinarily one of mixed law and fact. The presumption is against a change of domicile, so that the party who avers that there has been a change has the burden.[4] This presumption, it may, perhaps, be well enough to suggest, is not a conclusive one but one that may be overthrown by evidence. In most of the States actions of a transitory nature are required to be brought in the county in which the de-

v. Brockhaus, 10 Biss. 128; Shelton *v.* Tiffin, 6 How. (U. S.) 163, 165; *In re* Walker, 1 Lowell's Dec. 237; Petri *v.* Commercial Nat. Bank, 142 U. S. 644; Shaw *v.* Quincy, etc., Co., 145 U. S. 444.

[1] The principle is well settled that for the purposes of jurisdiction and judicial administration a person must have a domicile somewhere, and that he can have but one, and therefore a domicile once existing continues until another is acquired elsewhere. Ayer *v.* Weeks, 65 N. H. 248, S. C. 23 Am. St. R. 37. See, also, Gilman *v.* Gilman, 52 Me. 165, S. C. 83 Am. Dec. 502; Cobb *v.* Rice, 130 Mass. 231, 234.

[2] De Meli *v.* De Meli, 120 N. Y. 485, S. C. 17 Am. St. R. 652; Allgood *v.* Williams, 92 Ala. 551, S. C. 8 S. R. 722; Harvard College *v.* Gore, 5 Pick. 370; Cole *v.* Cheshire, 1 Gray, 441; State *v.* Steele, 33 La. Ann. 910; Littlefield *v.* Brooks, 50 Me. 475; Abington *v.* North Bridgewater, 23 Pick. 170. See, generally, Behrensmeyer *v.* Kreitz, 135 Ill. 591, S. C. 26 N. E. R. 704; Anderson *v.* Watt, 138 U. S. 694; Briscoe *v.* Southern, etc., Co., 40 Fed. R. 273.

[3] Langdon *v.* Doud, 6 Allen, 423, S. C. 83 Am. Dec. 641; Pells *v.* Snell, 130 Ill. 379. See, generally, Pullen *v.* Monk, 82 Me. 412; Frost *v.* Brisbin, 19 Wend. 11, S. C. 32 Am. Dec. 423; Tipton *v.* Tipton, 87 Ky. 243; Larquie *v.* Wife, 40 La. Ann. 450; White *v.* Tennant, 31 W. Va. 790, S. C. 13 Am. St. R. 896, 903; Shepard *v.* Wright, 113 N. Y. 582.

[4] Tanner *v.* King, 11 La. R. 175; Bangs *v.* Brewster, 111 Mass. 382; Cross *v.* Everts, 28 Texas, 523. See, generally, Kilburn *v.* Bennett, 3 Metcf. 199; Anderson *v.* Anderson, 42 Vt. 350; Kirkland *v.* Whately, 4 Allen, 462; Abington *v.* North Bridgewater, 23 Pick. 170; Wayne *v.* Greene, 21 Me. 357.

fendant resides, or, where there are several defendants, in the county in which some one or more of the defendants reside.[1] This requirement fixes the jurisdiction of the court, and if not complied with the proceedings will be erroneous. But if a party is sued in the wrong county he may waive the error and submit to the jurisdiction of the court; if he does this, the proceedings are valid and effective, for the right to object is a personal one that may be waived.[2] As a rule the county is taken as the geographical subdivision over which jurisdiction is given, but this, of course, is a matter largely regulated by statute. The limitation of jurisdiction to the county does not apply to non-residents, for a non-resident may be sued in any county in which process can be served upon him.[3] In probate matters the question of residence or domicile very often becomes one of controlling importance, and so it does in matters of guardianship and the like. There can be no doubt that where the question as to whether the action of the court in such matters was taken in the proper county is properly presented in a direct attack a proceeding in the wrong county would be held erroneous and a judgment annulling it be directed. But whether proceedings in such matters conducted in the wrong county are or are not void is a question upon which there is a stiff and stubborn conflict.[4] We can not yield

[1] Coffman *v.* Brandhoefer, 33 Neb. 279, S. C. 50 N.W. R. 6; Gandy *v.* Jolly (Neb.), 52 N. W. R. 376; Knott *v.* Dubuque, etc., Co. (Iowa), 51 N. W. R. 57; Smith *v.* Smith, 88 Cal. 572, S. C. 26 Pac. R. 356; Collins *v.* Bown, 45 Minn. 186, S. C. 47 N.W. R. 719; Cobbey *v.* Wright (Neb.), 45 N.W. R. 460; Hilliard *v.* Wilson, 76 Texas, 180, S. C. 13 S. W. R. 25; Rankin *v.* Rothschild, 78 Mich. 10, S. C. 43 N. W. R. 1077; Schloss *v.* Joslyn, 61 Mich. 267, S. C. 28 N. W. R. 96; Bruil *v.* Northwestern, etc., Co., 72 Wis. 430, S. C. 39 N.W. R. 529; Caswell *v.* Bunch, 77 Ga. 504; Carlisle *v.* Cowan, 85 Tenn. 165, S. C. 2 S. W. R. 26; Dunham *v.* Schindler, 17 Ore. 256, S. C. 20 Pac. R. 326.

[2] Betzoldt *v.* American Ins. Co., 47 Fed. R. 705; St. Louis, etc., Co. *v.* McBride, 141 U. S. 127; Donnelly *v.* Woolsey, 59 Hun, 618; McLemore *v.* Scales, 68 Miss. 47, S. C. 8 S. R. 844.

[3] Bryant *v.* McClure, 44 Mo. App. 553; Bohart *v.* Republic, etc., Co., 49 Kan. 94, S. C. 30 Pac. R. 180; Singleton *v.* O'Blenis, 125 Ind. 151, S. C. 25 N. E. R. 154; Rice *v.* Brown, 81 Me. 56, S. C. 16 Atl. R. 334.

[4] Affirming that such proceedings are not void are the cases of Barclift *v.* Treece, 77 Ala. 528, 531; Coltart *v.* Allen, 40 Ala. 155; Irwin *v.* Scriber, 18

to the reasoning of the courts which declare such proceedings to be nullities which no one is bound to respect, for we are persuaded that the reasoning is from false premises. The assumption upon which the entire reasoning is founded is an illicit one. Whether the deceased person at his death resided in the county is a jurisdictional fact to be determined by the court having authority over the general class of cases, and, although such a decision may be erroneous, it is not void. Such a case

Cal. 499; Griffith's Estate, 84 Cal. 107, S. C. 23 Pac. R. 528; Corrigan *v.* Jones, 14 Col. 311, S.C. 23 Pac. R. 913; Thomas *v.* Morrisett, 76 Ga. 384; Tant *v.* Wigfall, 65 Ga. 412; Bostwick *v.* Skinner, 80 Ill. 147; Wight *v.* Wallbaum, 39 Ill. 554; Succession of Gorrisson, 15 La. Ann. 27; Matter of Estate of Altemus, 32 La. Ann. 364, 368; Duson *v.* Dupre, 32 La. Ann. 896; Raborg *v.* Hammond, 2 Harr. & G. 42, 49; Johnson *v.* Beazley, 65 Mo. 250, S. C. 27 Am. R. 276; Dequindre *v.* Williams, 31 Ind. 444; Bumstead *v.* Read, 31 Barb. 661; Bolton *v.* Brewster, 32 Barb. 389; Monell *v.* Dennison, 17 How. Pr. 422; Lewis *v.* Dutton, 8 How. Pr. 99; Field *v.* McVickar, 9 Johns. 130; Williams *v.* Harrington, 11 Ired. 616; Rollins *v.* Henry, 84 N. Car. 569; Walker *v.* Goldsmith, 14 Ore. 125, S. C. 12 Pac. R. 537; East Tenn., etc., Co. *v.* Mahoney, 89 Tenn. 311, S. C. 15 S. W. R. 652; Eller *v.* Richardson, 89 Tenn. 575, S. C. 15 S. W. R. 650; Burdett *v.* Silsbee, 15 Texas, 604; Murchison *v.* White, 54 Texas, 78; Giddings *v.* Steele, 28 Texas, 732, S. C. 91 Am. Dec. 336, 341; Driggs *v.* Abbott, 27 Vt. 580, S. C. 65 Am. Dec. 214; Abbott *v.* Coburn, 28 Vt. 663, S. C. 67 Am. Dec. 735; Clapp *v.* Beardsley, 1 Vt. 151; Fisher *v.* Bassett, 9 Leigh, 119, S. C. 33 Am. Dec. 227; Andrews *v.* Avory, 14 Gratt. 229, S. C. 73 Am. Dec. 355; Doe *v.* Litherberry, 4 McLean, 442; Holmes *v.* Oregon, etc., Co., 9 Fed. R. 229. Asserting that such proceedings are void if conducted in the wrong county, are the cases of Sears *v.* Terry, 26 Conn. 273; Olmstead's Appeal, 43 Conn. 110; First National Bank *v.* Balcom, 35 Conn. 351; Culver's Appeal, 48 Conn. 165; Boyd *v.* Glass, 34 Ga. 253, S. C. 89 Am. Dec. 252; Lessee of Griffith *v.* Wright, 18 Ga. 173; Pawling *v.* Speed, 5 T. B. Monr. 580; Burnett *v.* Meadows, 7 B. Monr. 277, S. C. 46 Am. Dec. 517; Miller *v.* Swan, 91 Ky. 36, S. C. 14 S. W. R. 964; Collins *v.* Powell (Ky.), 19 S. W. R. 578; Succession of Williamson, 3 La. Ann. 261; Clemens *v.* Comfort, 26 La. Ann. 269; Moore *v.* Philbrick, 32 Me. 102, S.C. 52 Am. Dec. 642; Beckett *v.* Selover, 7 Cal. 215, S. C. 68 Am. Dec. 237; Cutts *v.* Haskins, 9 Mass. 543; Holyoke *v.* Haskins, 5 Pick. 20, S. C. 16 Am. Dec. 372; Strouse *v.* Drennan, 41 Mo. 289; Brooks *v.* Duckworth, 59 Mo. 48; Lucy *v.* Williams, 27 Mo. 280; Duke *v.* State, 57 Miss. 229; Bolton *v.* Jacks, 29 N. Y. Sup. Ct. 166; Johnson *v.* Corpenning, 4 Ired. Eq. 216, S. C. 44 Am. Dec. 106; People's Bank *v.* Wilcox, 15 R. I. 258; Thornton *v.* Baker, 15 R. I. 553, S. C. 10 Atl. R. 617; Munson *v.* Newson, 9 Texas, 109; Paul *v.* Willis, 69 Texas, 261, S. C. 7 S. W. R. 357; Reynolds *v.* Schmidt, 20 Wis. 374, 380; Thompson *v.* Whitman, 18 Wall. 457; Nettleton *v.* Mosier, 3 Fed. R. 387; Drexel *v.* Berney, 122 U. S. 241.

is a member of the general class over which the court has jurisdiction, and the decision that jurisdiction exists in the particular instance can not be void although it may be erroneous. The decisions to which we have referred show that the later cases, and, as we think, the better reasoned cases, take a different view from that asserted in the earlier cases.[1]

§ 255. **Presumption of jurisdiction—Superior Courts.**—It has long been established law that a court of general superior jurisdiction is presumed to be competent to give the judgment it pronounces.[2] It is a familiar saying that "nothing shall be

[1] It is probably true that to some extent the decision in Drexel *v.* Berney, 122 U. S. 241, opposes the general doctrine of the text, but we do not think the decision in that case can be regarded as holding that where it is adjudicated that a person is a resident of a county of the State in which the proceeding is conducted the adjudication may be successfully assailed collaterally. If it can be, then, it is certainly in conflict with the many cases of which Commissioners of Knox County *v.* Aspinwall, 21 How. (U. S.) 539, is a type wherein it is held that where a court decides that jurisdictional facts exist its decision is conclusive. If given the broad meaning sometimes ascribed to it the decision in Drexel *v.* Berney is in conflict with the general doctrine declared in such cases as Des Moines Navigation Co. *v.* Iowa, etc., Co., 123 U. S. 552; Erwin *v.* Lowry, 7 How. (U. S.) 172; Mattocks *v.* Baker, 2 Fed. R. 455; Skinner *v.* Moore, 2 Dev. & Batt. Law, 138, S. C. 30 Am. Dec. 155. There is, possibly, some reason for discriminating between cases where the proceedings are had in the proper State but in the wrong county and cases where the proceedings are in the wrong State or nation. Where the proceedings are had in the same State and the mistake is only as to the county there is unquestionably jurisdiction of the general class of cases, and the utmost that can be said is that there was error in exercising that jurisdiction in the particular instance, but whether the jurisdiction was properly or improperly exercised depends upon facts which it was the duty of the court to ascertain, and having ascertained the facts, it was its duty to apply the law to them, so that the proceedings can not be said to be void.

[2] Galpin *v.* Page, 18 Wall. 350; Black *v.* Epperson, 40 Texas, 162, 178; Slocum *v.* Providence, etc., Co., 10 R. I. 112; Pennington *v.* Gibson, 16 How. (U. S.) 65; Nations *v.* Johnson, 24 How. (U. S.) 195; Turner *v.* Jenkins, 79 Ill. 228; Hopper *v.* Fisher, 2 Head. (Tenn.) 253; Bass Foundry Co. *v.* The Board, 115 Ind. 234; Shewalter *v.* Bergman, 123 Ind. 155; Kelsey *v.* Wyley, 10 Ga. 371; Boker *v.* Chapline, 12 Iowa, 204; Huntington *v.* Charlotte, 15 Vt. 46; Pope *v.* Harrison, 16 Lea. (Tenn.) 82; Brownfield *v.* Weicht, 9 Ind. 394; Rogers *v.* Burns, 27 Pa. St. 525; Grignon's Lessees *v.* Astor, 2 How. (U. S.) 319, 340; Nunn *v.* Sturges, 22 Ark. 389; Housh *v.* People, 66 Ill. 178.

intended to be out of the jurisdiction of a superior court but that which specially appears to be so."[1] This general presumption should, as we believe, sustain the judgment of a court of general jurisdiction in all classes of cases, but this conclusion is probably not in accordance with the weight of authority, for the majority of the cases make a distinction between special authority and general jurisdiction. We can perceive no reason for this distinction, and are persuaded that, on principle, the cases which affirm that such a distinction exists are wrong. If the rank of the tribunal is such as to entitle it to the benefit of the presumption there is no reason why the exercise of one power rather than another should either broaden or narrow the rule. The presumption is founded on the principle that the court will follow the law, do its duty and do it properly, and, certainly, the nature of the power exercised, whether special or general, can not exert any influence upon the question. We can see no more reason for asserting that in rendering a judgment in an action of assumpsit the presumption is that there was jurisdiction, than there is for so asserting where the court appoints a receiver under statutory authority.

§ 256. **Presumption of jurisdiction—Inferior tribunals.**— The rule is that no presumptions or intendments are made in favor of the jurisdiction of inferior tribunals.[2] Some of the

[1] Peacock *v.* Bell, 1 Saunders, 73; Howard *v.* Gosset, 10 Q. B. 359; Guilford *v.* Love, 49 Texas, 715; Goar *v.* Maranda, 57 Ind. 339; Holmes *v.* Campbell, 12 Minn. 221; Butcher *v.* Bank, 2 Kan. 70; Reynolds *v.* Stansberry, 20 Ohio, 344, S. C. 55 Am. Dec. 459; Wells *v.* Waterhouse, 22 Me. 131; Ely *v.* Tallman, 14 Wis. 28; Potter *v.* Merchants' Bank, 28 N. Y. 641, 656; Davis *v.* Hudson, 29 Minn. 27; Reed *v.* Vaughan, 15 Mo. 137; State *v.* Lewis, 22 N. J. L. 564; Adams *v.* Jeffries, 12 Ohio, 253, S. C. 40 Am. Dec. 477; Adams *v.* Cowles, 95 Mo. 501, S. C. 6 Am. St. R. 74.

[2] Hanna *v.* Morrow, 43 Ark. 107; Victor, etc., Co. *v.* The Justice, etc., Co., 18 Nev. 21; Tompert *v.* Lithgow, 1 Bush. (Ky.) 176; Thatcher *v.* Powell, 6 Wheat. 119; Palmer *v.* Oakley, 2 Doug. 433, S. C. 47 Am. Dec. 41; Goulding *v.* Clark, 34 N. H. 148; Tucker *v.* Harris, 13 Ga. 1, S. C. 58 Am. Dec. 488; Lowry *v.* Erwin, 6 Rob. (La.) 192, S. C. 39 Am. Dec. 556; Harvey *v.* Tyler, 2 Wall. 328; Dick *v.* Wilson, 10 Ore. 490; Smith *v.* Finley, 52 Ark. 373;

courts declare that "nothing is within the jurisdiction of an inferior court except that which specially appears to be so," but this we regard as an extravagant statement of the general rule, for we believe that if from the whole record it appears generally that there is jurisdiction the proceedings can not be deemed void.[1] There is little diversity of opinion as to the general rule stated in the opening sentence of this paragraph, but there is a wide diversity of opinion as to what shall be considered an inferior tribunal.[2] Where jurisdiction once attaches the same presumptions attend the proceedings of a court of inferior jurisdiction as those which prevail in regard to courts of superior jurisdiction.[3] The proceedings of a court of inferior

Granite Bank *v.* Treat, 18 Me. 340; Wight *v.* Warner, 1 Dougl. (Mich.) 384; Spear *v.* Carter, 1 Mich. 19; Barrett *v.* Crane, 16 Vt. 246; Ohio, etc., Co. *v.* Schultz, 31 Ind. 150; Perkins *v.* Attaway, 14 Ga. 27; New Jersey, etc., Co. *v.* Suydam, 17 N. J. L. 25; Kane *v.* Desmond, 63 Cal. 464; Keybers *v.* McComber, 67 Cal. 395. See, generally, Mallett *v.* Uncle Sam, etc., Co., 1 Nev. 188; Gallatian *v.* Cunningham, 8 Cowen, 361; Rowley *v.* Howard, 23 Cal. 401; Gilbert *v.* York, 111 N. Y. 544.

[1] Karnes *v.* Alexander, 92 Mo. 660, S. C. 4 S. W. R. 518.

[2] *Ante*, §§ 151, 152, 153, 154; Gamble *v.* Central, etc., Co., 80 Ga. 595, S. C. 12 Am. St. R. 276; Pursley *v.* Hayes, 22 Iowa, 11. In Wall *v.* Wall, 123 Pa. 545, S. C. 10 Am. St. 549, the doctrine that judgments of inferior courts may be collaterally assailed is carried very far, for in that case it was held that although the register of wills acts as a judicial officer, still, if he admits to probate as a will an instrument that is not a will, his proceedings are void. As supporting this doctrine the court cited Bowlby *v.* Thunder, 105 Pa. St. 173. It seems to us that if there was general jurisdiction of the subject the decision that an instrument was a will when in fact it was not a will, did not make the proceedings void for want of jurisdiction. If the register had decided correctly no one would doubt that his decision could not be assailed, but, as the power to decide is the power to decide right as well as wrong, a wrong decision does not make the proceeding a mere nullity.

[3] In the case of Comstock *v.* Crawford, 3 Wall. 396, 403, the general doctrine was thus stated: "It is well settled that when the jurisdiction of a court of limited and special jurisdiction appears upon the face of its proceedings, its action can not be attacked for mere error or irregularity. The jurisdiction appearing, the same presumption of law arises that it was rightfully exercised as that which prevails with reference to the action of a court of superior and general authority." Board *v.* Markle, 46 Ind. 96; Levy *v.* Furguson, etc., Co., 51 Ark. 317, S. C. 11 S. W. R. 284; Visart *v.* Bush, 46 Ark. 153; Chicago, etc., *v.* Chamberlain, 84 Ill. 333; State *v.* Hinchman, 27 Pa. St. 479; Little *v.* Sinnett, 7 Iowa, 324; Pursley *v.* Hayes, 22 Iowa, 11; Perrine *v.* Farr, 2 Zab. (N. J.) 356; Bell *v.* Raymond, 18 Conn.

jurisdiction are no more vulnerable to collateral attacks than are those of the highest court if it affirmatively appears that it has rightfully acquired jurisdiction of the case. The difference, in this respect, between the two classes of courts is as to the presumption of jurisdiction, not as to the mode of procedure.

§ 257. **Averment of jurisdictional facts.**—The general rule that everything is intended to be within the jurisdiction of a superior court renders it unnecessary to plead facts conferring jurisdiction in cases brought in that class of courts.[1] This general doctrine goes so far as to enable an action to be maintained upon a judgment of a court of the class designated without averring facts showing the existence of jurisdiction in the tribunal.[2] The presumption supplies the place of averments. In some of the probate cases it is held that all material facts must be specifically averred, as, for instance, in petitions to sell the real estate of a decedent, that the personal property is insufficient to pay debts,[3] but, other cases deny, and with reason, that such averments are essential to jurisdiction.[4] It seems to us that if there is enough in the petition to show that the case belongs to the class of which the court has jurisdiction the sufficiency of the petition in the particular instance is a

91; Shoemaker *v.* Brown, 10 Kan. 383; Bernal *v.* Lynch, 36 Cal. 135; Sheldon *v.* Wright, 5 N. Y. 497; Reid *v.* Spoon, 66 N. Car. 415; Traer *v.* Whitman, 56 Iowa, 443; Moore *v.* Jeffers, 53 Iowa, 202.

[1] Board *v.* Leggett, 115 Ind. 544; Bass, etc., Works *v.* Board, 115 Ind. 234; Kinnaman *v.* Kinnaman, 71 Ind. 417; Brownfield *v.* Weicht, 9 Ind. 394.

[2] Campe *v.* Lassen, 67 Cal. 139. See, generally, *Ex parte* Cuddy, 131 U. S. 280, S. C. 9 Sup. Ct. R. 703; Mahoney *v.* Middleton, 41 Cal. 41; Weaver *v.* Brown, 87 Ala. 533; Cavanaugh *v.* Smith, 84 Ind. 380; Mickel *v.* Hicks, 19 Kan. 578; Taggart *v.* Muse, 60 Miss. 870; McAnear *v.* Epperson, 54 Texas, 220; Ferguson *v.* Teel, 82 Va. 690.

[3] Sermon *v.* Black, 79 Ala. 507; Wright *v.* Edwards, 10 Ore. 298; Wilbun *v.* McCally, 63 Ala. 436; Ackley *v.* Dygert, 33 Barb. 176; Needham *v.* Salt Lake, etc., 7 Utah, 319, S. C. 26 Pac. R. 920.

[4] McKeever *v.* Ball, 71 Ind. 398; Read *v.* Howe, 39 Iowa, 553; Todd *v.* Flournoy's Heirs, 56 Ala. 99, S. C. 28 Am. R. 758; Kleinecke *v.* Woodward, 42 Texas, 311; Gillenwaters *v.* Scott, 62 Texas, 670, 673; Nichols *v.* Lee, 10 Mich. 526. See, generally, Coolman *v.* Fleming, 82 Ind. 117; May *v.* Board, 30 Fed. R. 250; Valderes *v.* Bird, 10 Rob. (La.) 396; Camden *v.* Plain, 91 M . 117, S. C. 4 S. W. R. 86; Showers *v.* Robinson, 43 Mich. 502, S. C. 5 N. W. R. 988.

question for the decision of the court and that its decision, although erroneous, is not void. Where it is essential to the exercise of jurisdiction over a general class of cases then the facts showing the particular case to be a member of the class should be alleged, but we do not think it necessary to the existence of jurisdiction that all the facts essential to the existence of a cause of action are required to be averred in order to give jurisdiction. The existence of a cause of action and the existence of jurisdiction are very different things. The rule in the Federal courts is that the facts on which the jurisdiction of the court depends must appear, and hence, in order to give jurisdiction in cases where jurisdiction depends upon citizenship, the diverse citizenship must be averred.[1]

§ 258. **Judgment by default—Presumptions.**—Where a judgment is rendered by default in a suit or action prosecuted in a court of competent general jurisdiction the presumption, in the absence of anything in the record, showing that it was not properly rendered, is in favor of its validity where the attack is a collateral one.[2] Where, however, there is a direct appeal it has been held that when the record is silent there is no presumption of jurisdiction of the person.[3] In collateral proceedings the silence of the record of courts of general jurisdiction upon the subject of process and its service is not available for the overthrow of the judgment.[4] But where the record affirma-

[1] Continental, etc., *v.* Rhoads, 119 U. S. 237, and cases cited. Amory *v.* Amory, 95 U. S. 186.

[2] Evans *v.* Young, 10 Colo. 316, S. C. 3 Am. St. R. 583; Fogg *v.* Gibbs, 8 Baxt. 464. See, generally, First National Bank *v.* Geneseo, etc., Co. (Kan.), 32 Pac. R. 902. But, see, Farris *v.* Walter, 2 Colo. App. 450, S. C. 31 Pac. R. 231; Seeley *v.* Taylor, 17 Colo. 70, S. C. 28 Pac. R. 723.

[3] Schloss *v.* White, 16 Cal. 65; Joyce *v.* Joyce, 5 Cal. 449; State *v.* Woodlief, 2 Cal. 241; Porter *v.* Herman, 8 Cal. 619; Winslow *v.* Lambard, 57 Me. 356; Hudson *v.* Breeding, 7 Ark. 445; Elligood *v.* Cannon, 4 Harr. 176; Connoly *v.* Railroad, 29 Ala. 373; Eltzroth *v.* Voris, 74 Ind. 459; Schissel *v.* Dickson, 129 Ind. 139, S. C. 28 N. E. R. 540.

[4] Sims *v.* Gay, 109 Ind. 501; Waltz *v.* Borroway, 25 Ind. 380; Dwiggins *v.* Cook, 71 Ind. 579; Coit *v.* Haven, 30 Conn. 190; Lawler *v.* White, 27 Texas, 250; Swearingen *v.* Gulick, 67 Ill. 208; Evans *v.* Young, 10 Colo. 316, S. C. 15 Pac. R. 424; Messenger *v.* Kintner, 4 Binn. 97; Fogg *v.* Gibbs, 8 Baxt. 464; Herrick *v.* Butler, 30 Minn. 156, S. C. 14 N. W. R. 794; Sharp *v.* Brunnings,

tively shows that there was no notice, or one entirely destitute of force, jurisdiction is shown not to exist, the presumption in favor of the action of the court is overthrown and the proceedings are void.[1] But mere defects or irregularities will not render a judgment by default vulnerable to a collateral attack.[2] Defects or irregularities are supplied by the presumption that prevails in favor of the jurisdiction of courts of general jurisdiction. It was held in one case that where the papers were lost it would be presumed that the case was one in which judgment by default was authorized.[3] Incomplete and defective recitals indicating that there was an appearance will sustain the presumption.[4] Where the record refers to an agreement

35 Cal. 528; McClanahan *v.* West, 100 Mo. 309; Williams *v.* Haynes, 77 Tex. 283, S. C. 19 Am. St. R. 752; Wilkerson *v.* Schoonmaker, 77 Texas, 615, S. C. 19 Am. St. R. 803; Crim *v.* Kessing, 89 Cal. 478. See, generally, Crank *v.* Flowers, 4 Heisk. 629; Welsh *v.* Childs, 17 Ohio St. 319; Sloan *v.* McKinstry, 18 Pa. St. 120; Baldridge *v.* Penland, 68 Texas, 441, S. C. 4 S.W. R. 565; Credit, etc., *v.* Rogers, 10 Neb. 184, S. C. 4 N. W. R. 1012: Woodhouse *v.* Fillbates, 77 Va. 317; Ray *v.* Rowley, 1 Hun, 614; Slicer *v.* Bank of Pittsburgh, 16 How. (U. S.) 570.

[1] Read *v.* French, 28 N.Y. 285; Watson *v.* Miller, 69 Texas, 175, S. C. 5 S. W. R. 680; Great West, etc., Co. *v.* Woodmas, etc., Min. Co., 12 Colo. 46, S. C. 20 Pac. R. 771; McMahon *v.* Turney, 45 Mo. App. 103; Renier *v.* Hurlbut, 81 Wis. 24, S. C. 14 Lawy. Rep. Anno. 562; Dennison *v.* Taylor, 142 Ill. 45, S. C. 31 N. E. R. 148; Joyce *v.* Joyce, 5 Cal. 449. See, generally, Hobson *v.* Peake, 44 La. Ann. 383, S. C. 10 So. R. 762; Taylor *v.* Ohio River, etc., Co., 35 W. Va. 328, S. C. 13 S. E. R. 1009; Higgins *v.* Beckwith, 102 Mo. 456, S. C. 14 S.W. R. 931; Schmidt *v.* Thomas, 33 Ill. App. 109; Cory *v.* Dennis, 93 Ala. 440, S. C. 9 So. R. 302.

[2] Anderson *v.* Gray, 134 Ill. 550, S. C. 25 N. E. R. 843; McAlpine *v.* Sweetser, 76 Ind. 78; Morrow *v.* Weed, 4 Iowa, 77; Bonsall *v.* Isett, 14 Iowa, 309; Ballinger *v.* Tarbell, 16 Iowa, 491; Hendrick *v.* Whittemore, 105 Mass. 23; Cook *v.* Darling, 18 Pick. 393; Finneran *v.* Leonard, 7 Allen, 54; Wright *v.* Marsh, 2 Greene (Iowa), 94; Paine *v.* Moreland, 15 Ohio, 435; Borden *v.* State, 6 Eng. (Ark.) 519; Sheldon *v.* Wright, 5 N.Y. 497; Delaney *v.* Gault, 30 Pa. St. 63; Callen *v.* Ellison, 13 Ohio St. 446; People *v.* Hagar, 52 Cal. 171; Betts *v.* Baxter, 58 Miss. 329. See, generally, Frankfurth *v.* Anderson, 61 Wis. 107; Genobles *v.* West, 23 So. Car. 154; McPherson *v.* Beatrice, 12 Neb. 202; Yentzer *v.* Thayer, 10 Colo. 63, S. C. 3 Am. St. R. 563.

[3] Fogg *v.* Gibbs, 8 Baxt. 464; Herrick *v.* Butler, 30 Minn. 156, 14 N. W. Rep. 794.

[4] Crank *v.* Flowers, 4 Heisk. 629; Welsh *v.* Childs, 17 Ohio St. 319. See, generally, Sloan *v.* McKinstry, 18 Pa. St. 120; Baldridge *v.* Penland, 68 Tex. 441, S. C. 4 S. W. Rep. 565; Credit Foncier *v.* Rogers, 10 Neb. 184, S. C. 4 N. W. Rep. 1012; Woodhouse *v.* Fillbates, 77 Va. 317; Ray *v.* Rowley, 1 Hun, 614; Slicer *v.* Bank of Pittsburgh,

but does not set it out, the presumption is that it authorized the decree.[1] Where the filing of an affidavit is a prerequisite to jurisdiction the silence of the record warrants the presumption that the affidavit was filed.[2] It has also been held that the failure of the record to show that the proper preliminary steps were taken to authorize a judgment by confession did not impair the validity of the judgment inasmuch as it would be presumed that all was done that the law required.[3] It is important to bear in mind that presumptions available on appeal, are not, by any means, always available in a collateral attack. The failure to observe this distinction has led some of the courts into error and caused them to characterize as void that which is merely voidable. In the cases we have referred to this difference is illustrated as it is in very many others. A striking illustration of the distinction of which we are speaking is supplied by the cases wherein the sufficiency of a complaint is in question. The rule is that defects in the statement of the cause of action will not be sufficient to authorize a collateral attack,[4] but that such defects, if material, will avail on

16 How. (U.S.) 570; Morrow *v.* Weed, 4 Iowa, 77.

[1] Collins *v.* Loyal, 56 Ala. 403; Hearn *v.* State, 62 Ala. 218.

[2] Dean *v.* Thatcher, 3 Vroom. (N.J.) 470; Newcomb *v.* Newcomb, 13 Bush. 544. See, as to the effect of defective notice, Paine *v.* Moreland, 15 Ohio, 435; Beech *v.* Abbott, 6 Vt. 586; Glover *v.* Holman, 3 Heisk. 519; West *v.* Williamson, 1 Swan, 277; Moomey *v.* Maas, 22 Iowa, 380; Peck *v.* Strauss, 33 Cal. 678; Town of Lyons *v.* Cooledge, 89 Ill. 529; Sacramento Savings Bank *v.* Spencer, 53 Cal. 737; Kingman *v.* Paulson, 126 Ind. 507; Lantz *v.* Maffatt, 102 Ind. 23.

[3] Caley *v.* Morgan, 114 Ind. 350. We are not unmindful of the fact that there is a radical difference between a collateral attack upon a judgment and a direct attack by appeal, nor are we unmindful of the fact that in many cases cited the decisions referred especially to a collateral attack. But the principle to which the cases are cited is that which asserts that the silence of the record does not overcome the presumption that the proceedings of the court were regular and legal, for that presumption exists even in the case of appeal where there is no averment or no fact opposing it. There must, indeed, be objection, exception, and a due reservation of a ruling for review, and, of course, a silent or incomplete record can not accomplish what only objections and exceptions can accomplish.

[4] Old *v.* Mohler, 122 Ind. 594, 599.

appeal even where the defendant made default in the trial court.[1]

§ 259. **Effect of assuming jurisdiction—Implied decision asserting jurisdiction.**—Where a court of superior jurisdiction assumes authority over a case belonging to a class over which its jurisdiction extends, there is an implied judgment that jurisdiction exists.[2] The exercise of jurisdiction creates a presumption that the question of authority has been considered and a judgment pronounced upon it. It is not necessary that there should be any formal declaration or entry of a decision upon the subject of jurisdiction, for a decision on that subject is a necessary inference from the act of proceeding in the cause.[3] This is a reasonable and logical rule, and, notwithstanding the great weight of authority to the contrary, we think it should apply to all courts having a permanent existence and authority over a general class or classes of actions. It is the presumption, even where there is no official character and no sworn duty to perform, that all acts are rightfully performed, and there is no valid reason why the presumption should not apply to all grades of courts. The contrary doctrine rests upon the basal

[1] Abbe *v.* Marr, 14 Cal. 210; Strock *v.* Commonwealth, 90 Pa. St. 272; Collins *v.* Gibbs, 2 Burr. 899. As we have elsewhere said, jurisdiction does not depend upon whether facts are well pleaded, but upon whether the facts stated, however incompletely or defectively, are sufficient to show that the particular case belongs to a general class over which the authority of that court is extended by law. Presumptively there is jurisdiction of every individual member of the general class.

[2] Clary *v.* Hoagland, 6 Cal. 685; State *v.* Waupaca County Bank, 20 Wis. 640; Thornton *v.* Baker, 15 R. I. 553, S. C. 10 Atl. Rep. 617; Ney *v.* Swinny, 36 Ind. 454; Doe *v.* Smith, 1 Ind. 451, 457; English *v.* Wordman, 40 Kan. 752, S. C. 21 Pac. R. 283; McGregor *v.* Morrow, 40 Kan. 730, S. C. 21 Pac. R. 157. See, generally, Branwell *v.* Penneck, 7 B. & C. 536; Bunbury *v.* Fuller, 9 Exch. 111; Wells *v.* Brackett, 30 Me. 61; Otis *v.* DeBoer, 116 Ind. 531; Ballard *v.* Thomas, 19 Gratt. 14, 20. See, also, *post*, § 260; *ante*, §§ 183, 184.

[3] Osborn *v.* Sutton, 108 Ind. 443; Jackson *v.* State, 104 Ind. 516, S. C. 3 N. E. R. 863; Florentine *v.* Barton, 2 Wall. 210; Updegraff *v.* Palmer, 107 Ind. 181; Landon *v.* Comet, 62 Mich. 80, S. C. 28 N. W. R. 788, 793; Young *v.* Wells, 97 Ind. 410; Adams *v.* Harrington, 114 Ind. 66, 71; Plummer *v.* Waterville, 32 Me. 566; Humboldt County *v.* Dinsmore, 75 Cal. 604, S. C. 17 Pac. R. 710; Wyatt *v.* Steele, 26 Ala. 639; Vosler *v.* Brock, 84 Mo. 574, 578.

proposition that inferior judicial officers are presumed to do wrong instead of right, and this is a flagrant violation of every principle of reason and logic. No matter what the rank of a court may be, it necessarily adjudges that it has authority to proceed whenever it takes a step in the case, and it should be presumed that this decision was not wrongful, since to do otherwise is to assume that the court violated the law and usurped authority.

§ 260. **Decision that jurisdictional facts exist—Conclusiveness of.**—Where there is authority over a general class of cases and the court is required to ascertain and decide whether the facts essential to jurisdiction in the particular instance exist, its decision can not be collaterally impeached.[1] This rule does not mean that any judicial tribunal, high or low, can create jurisdiction for itself, for that no court can do, but it does mean that the court may ascertain and conclusively decide as against a collateral attack, whether jurisdictional facts exist in a particular instance authorizing it to proceed. The court does not, in doing this, create jurisdiction of the general subject, but it simply inquires and decides whether in the particular case such facts exist as authorize it to proceed to judgment. If, for instance, a justice of the peace has jurisdiction of a general class of misdemeanors and it becomes necessary for him to decide whether that jurisdiction shall be exercised in a particular instance, and his right to exercise jurisdiction depends

[1] The general rule to which we refer was thus tersely stated in The Evansville, etc., Co. *v.* City of Evansville, 15 Ind. 395, 421: "It is a well settled principle, that where the jurisdiction of an inferior court depends upon a fact which such court is required to ascertain and settle, by its decision, such decision is conclusive." The court cited the following cases: Brittain *v.* Kinnaird, 1 Brod. & Bing. 432; Betts *v.* Bagley, 12 Pick. 572; Martin *v.* Mott, 12 Wheat. 19; Vanderheyden *v.* Young, 11 John. 150; *vide*, also, Birdsall *v.* Phillips, 17 Wend. 464; *Ex parte* Watkins, 3 Pet. R. 193; People *v.* City of Rochester, 21 Barb. 656. See, also, Wanzer *v.* Howland, 10 Wis. 8; Angell *v.* Robbins, 4 R. I. 493; Dyckman *v.* Mayor, 5 N. Y. 434; Agry *v.* Betts, 12 Me. 415; Lowe *v.* Dore, 32 Me. 27; Waterhouse *v.* Cousins, 40 Me. 333; People *v.* Hagar, 52 Cal. 171; Bonsall *v.* Isett, 14 Iowa, 309; Wyatt *v.* Rambo, 29 Ala. 510, S. C. 68 Am. Dec. 89; Goodwin *v.* Sims, 86 Ala. 102, S. C. 11 Am. St. R. 21.

upon the existence of certain facts, his decision that such facts exist is conclusive as against a collateral attack in a case where there is a complaint, affidavit or the like, calling into exercise his general jurisdiction. The rule we have stated is an old one, and it has been applied in a great variety of cases. It has been applied by the Supreme Court of the United States to cases where an inferior tribunal prior to issuing bonds must ascertain whether the petition is signed by the requisite number of persons.[1] Other courts have in numerous instances applied the rule to cases of a similar character.[2] The doctrine has been asserted and enforced in probate matters and in cases of that general nature.[3] There is a difference, and a very important one, be-

[1] The Commissioners of Knox County *v.* Aspinwall, 21 How. (U. S.) 539; Town of Coloma *v.* Eaves, 92 U. S. 484; Commissioners, etc., *v.* Bolles, 94 U. S. 104; Venice *v.* Murdock, 92 U. S. 494; Bissell *v.* Jeffersonville, 24 How. (U. S.) 287. See, generally, Bank *v.* Dandridge, 12 Wheat. 64, 70; Knox County *v.* Ninth National Bank (U. S.), 13 Sup. Ct. R. 267. It seems to us that the general doctrine of the court is asserted in McNitt *v.* Turner, 16 Wall. 352; Simmons *v.* Saul, 138 U. S. 439, S. C. 11 Sup. Ct. R. 369. In the case last cited the court said: "The following authorities are strong in support of the general proposition under consideration: Thomson *v.* Tolmie, 2 Pet. 157; Mohr *v.* Manierre, 101 U. S. 417; Florentine *v.* Barton, 2 Wall. 210; Thaw *v.* Ritchie, 136 U. S. 519."

[2] Ryan *v.* Varga, 37 Iowa, 78; Koehler *v.* Hill, 60 Iowa, 543; Spaulding *v.* Homestead Association, 87 Cal. 40; Ela *v.* Smith, 5 Gray, 121, S. C. 66 Am. Dec. 356; Alexander *v.* Gill, 130 Ind. 485, S. C. 30 N. E. R. 525; Tucker *v.* Sellers, 130 Ind. 514, 517; McEneney *v.* Town of Sullivan, 125 Ind. 407, 412; State *v.* Nelson, 21 Neb. 572, S. C. 32 N. W. R. 589; State *v.* Weatherly, 45 Mo. 17; Ely *v.* Board of Commissioners, 112 Ind. 361, S. C. 14 N. E. R. 236; City of Camden *v.* Mulford, 26 N. J. L. 49, 59; Martin *v.* Carron, 26 N. J. L. 228, 231; Ayres *v.* Lawrence, 63 Barb. 454; Quinlan *v.* Myers, 29 Ohio St. 500; Argo *v.* Barthand, 80 Ind. 63; Calhoun *v.* Delhi, etc., Co., 64 How. Pr. 291; Town of Cherry Creek *v.* Becker, 123 N.Y. 161; Henline *v.* People, 81 Ill. 269; Chicago, etc., Co. *v.* Chamberlain, 84 Ill. 333. But see, Hovey *v.* Barker, 45 Kan. 699, S. C. 26 Pac. R. 591; Mulligan *v.* Smith, 59 Cal. 206; Town of Duanesburg *v.* Jenkins, 40 Barb. 574; Kungle *v.* Fasnacht, 29 Kan. 559; Oliphant *v.* Atchison Co., 18 Kan. 386; Wilson *v.* Town of Caneadea, 15 Hun, 218; Town of Mentz *v.* Cook, 108 N. Y. 504, S. C. 15 N. E. R. 541.

[3] Porter *v.* Purdy, 29 N. Y. 106, S. C. 86 Am. Dec. 283; Lewis *v.* Dutton, 8 How. Pr. 99; Roderigas *v.* East River, etc., Institution, 76 N. Y. 316, S. C. 32 Am. R. 309; Landford *v.* Dunklin, 71 Ala. 594; May *v.* Marks, 74 Ala. 249; Clancy *v.* Stephens, 92 Ala. 577, S. C. 9 So. R. 522; Goodwin *v.* Sims, 86 Ala. 102, S. C. 11 Am. St. R. 21. See authorities cited in note 1, *ante* page 165, § 183. See, generally, United States *v.* Walker, 109 U. S. 258; Kellogg *v.*

tween a direct attack and a collateral assault, for upon a direct attack, made as the law provides, all rulings and decisions may be questioned, whereas upon collateral attack the only question open to investigation is that of jurisdiction, so that rulings as to jurisdictional facts may be often questioned on appeal, although in collateral proceedings not open to investigation.

§ 261. **Recitals of jurisdictional facts or matters.**—Where a court has jurisdiction of a general class of cases, is a permanent judicial tribunal and is authorized by law to keep a record of its proceedings, and that record is always open to the public, recitals in the record made by it in a case belonging to the general class over which it has jurisdiction are conclusive as against a collateral attack. We know that there is much conflict upon the general doctrine which our proposition embodies,

Johnson, 38 Conn. 269; Bouldin *v.* Ewart, 63 Mo. 330; Quayle *v.* Missouri, etc., Co., 63 Mo. 465; Van Steenbergh *v.* Bigelow, 3 Wend. 42; Cauldwell *v.* Curry, 93 Ind. 363; Goodwin *v.* Inhabitants, 12 Me. 271; Hunter *v.* Hatton, 4 Gill. 115, S. C. 45 Am. Dec. 117; Stevenson *v.* Superior Court, 62 Cal. 60, S. C. 47 Am. R. 465; Thomas *v.* People, 107 Ill. 517, S. C. 47 Am. R. 458; Devlin *v.* Commonwealth, 101 Pa. St. 273, S. C. 47 Am. R. 710; D'Arusment *v.* Jones, 4 Lea, 251, S. C. 40 Am. R. 12. The three cases last named were cases in which letters of administration were granted where the supposed decedent was living, and the reasoning to some extent seems to conflict with the statements of the text. In Porter *v.* Purdy, 29 N. Y. 106, it was said: "When, in special proceedings in courts or before officers of limited jurisdiction, they are required to ascertain a particular fact, or to appoint persons to act in such proceedings, having particular qualifications or occupying some peculiar relation to the parties or subject, such acts, when done, are in the nature of adjudications, which, if erroneous, must be corrected by a direct proceeding for that purpose; and if not so corrected, the subsequent proceedings which rest upon them are not affected, however erroneous such adjudications may be." In Grignon's Lessee *v.* Astor, 2 How. (U. S.) 319, where, by a law of Michigan, the county courts have power, under certain circumstances, to order the sale of the real estate of a deceased person for the payment of debts and legacies, it was held that it was for the court to decide upon the existence of the facts which gave jurisdiction. In Brittain *v.* Kinnaird, 1 Brod. & Bing. 432, Dallas, Ch. J., said: "The magistrate, it is urged, could not give himself jurisdiction by finding that to be a fact which did not exist. But he was bound to inquire as to the fact, and when he has inquired his conviction is conclusive of it."

or, rather, outlines, and that the broad statement we have made is probably not in accordance with the weight of authority, but we believe that it is sustained by principle, and is the only just doctrine that can be practically enforced. We do not affirm that any court can give itself jurisdiction of the general subject by reciting in its record that it has jurisdiction, and our proposition is not intended to convey any such meaning, nor, properly interpreted, does it do so. We assume that it is indispensably requisite to the authority to impress validity upon any record that the particular case should belong to a class over which the court has general jurisdiction, and upon this assumption we affirm that a record in a particular case of the class "imports absolute verity." We do not mean to be understood as asserting that where the record is contradictory or so entirely defective as to be manifestly imperfect and incomplete, its recitals are to be taken as true, but where the record is fair, intelligible and clear it ought to be so taken. If a court attempts to make a record in a case belonging to a class over which it has no jurisdiction its attempt will be abortive and the recitals utterly valueless. If, for instance, a justice of the peace should assume to issue a writ of mandamus or to decide that a public officer shall receive a salary, he could make no legal record, for over the general class of cases he has no power. The doctrine declared in some of the cases is, as we believe, entirely correct if applied to cases where there is no jurisdiction of the general subject,[1] but not correct where there is jurisdiction of the general subject. If there is jurisdiction of the general subject there is power to make a record, and a record made under a lawful power by a permanent judicial tribunal must be held to state the truth until the contrary appears, and as intrinsic evidence is not competent to

[1] Starbuck *v.* Murray, 5 Wend. 148, S. C. 21 Am. Dec. 172; Putnam *v.* Man, 3 Wend. 202, S. C. 20 Am. Dec. 686; Noyes *v.* Butler, 6 Barb. 613. As bearing upon this phase of the general subject, reference may be made to Fitzhugh *v.* Custer, 4 Texas, 391, S. C. 51 Am. Dec. 728; Smith *v.* Tupper, 4 Sm. & Mar. 261, S. C. 43 Am. Dec. 483; Mastin *v.* Gray, 19 Kan. 458, S. C. 27 Am. Rep. 149. In Ferguson *v.* Crawford, 70 N. Y. 253, S. C. 26 Am. R. 589, will be found an exhaustive review of the cases.

sustain a collateral attack it is not legally possible to treat the recitals of the record of such a court as untrue. The authorities support the doctrine we are endeavoring to maintain so far as courts of general superior jurisdiction are concerned, at least so far as domestic judgments are involved, but deny that it applies to what are termed "courts of inferior limited jurisdiction," so that, after all, the principal contest falls on the question of the character or rank of the tribunal rather than on the general effect of record recitals made by judicial tribunals. Silence of the record as to jurisdictional facts does not authorize any inference or intendment against the proceedings,[1] and certainly, where there is a recital that the jurisdictional facts do exist there can be nothing upon which a collateral attack can be founded. The whole record is to be inspected, and if upon inspection it affirmatively and clearly appears that the recitals showing jurisdiction are untrue the collateral attack, other necessary factors being present, may prevail.[2]

[1] In Dequindre *v.* Williams, 31 Ind. 444, the court said: "It is not to be denied that a court of superior jurisdiction may so make a record in a case where it has no jurisdiction that the validity of the judgment can not be questioned collaterally." The general subject received very careful consideration in Coit *v.* Haven, 30 Conn. 190, S. C. 79 Am. Dec. 244, and the reasons supporting the general doctrine were well stated. The cases upon the general subject are very numerous; among them are, Lessee of Fowler *v.* Whiteman, 2 Ohio St. 270; Callen *v.* Ellison, 13 Ohio St. 446, S. C. 82 Am. Dec. 448; Harman *v.* Moore, 112 Ind. 221; Segee *v.* Thomas, 3 Blatchf. 11; Hotchkiss *v.* Cutting, 14 Minn. 537; Penobscott, etc., Co. *v.* Weeks, 52 Me. 456; Aultman *v.* McLean, 27 Iowa, 129; Eastman *v.* Waterman, 26 Vt. 494; Pugh *v.* McCue, 86 Va. 475; Starns *v.* Hadnot, 42 La. Ann. 366; People *v.* Harrison, 84 Cal. 607; Riggs *v.* Collins, 2 Biss. 268; Wright *v.* Weisinger, 5 Sm. & M. 210; Delaney *v.* Gault, 30 Pa. St. 63; Swift *v.* Myers, 37 Fed. R. 37; Rigby *v.* Lefevre, 58 Miss. 639; Riley *v.* Waugh, 8 Cush. 220; Borden *v.* State, 11 Ark. 519; Westerwelt *v.* Lewis, 2 McLean, 511. A distinction is made by some of the cases between domestic and foreign judgments. *Ante*, § 258. See, also, Evans *v.* Young, 10 Colo. 316, S. C. 3 Am. St. R. 583; Luco *v.* Commercial Bank, 70 Cal. 339; Benefield *v.* Albert, 132 Ill. 665; Yaple *v.* Titus, 41 Pa. St. 195; Cook *v.* Darling, 18 Pick. 393; Stephenson *v.* Newcomb, 5 Harr. (Del.) 150; Crafts *v.* Dexter, 8 Ala. 767, S. C. 42 Am. Dec. 666. See, generally, Cox *v.* Thomas, 9 Gratt. 323; Finneran *v.* Leonard, 7 Allen, 54, S. C. 83 Am. Dec. 665; Blythe *v.* Richards, 10 Serg. & R. 260, S. C. 13 Am. Dec. 672.

[2] Adams *v.* Cowles, 95 Mo. 501, S. C.

We suppose, however, as the presumption is in favor of jurisdiction, that where the court is one of superior jurisdiction the record must not only affirmatively show that none exists in the particular instance but must show it so clearly and satisfactorily as to completely overthrow the inference that jurisdiction existed.[1] As indicated in a note to a preceding part of this paragraph a distinction is made between foreign and domestic judgments.[2] Upon the question whether extrinsic evidence is admissible to show that jurisdiction did not exist there is a conflict of authority. We are unable to perceive on what principle such evidence is admissible. If jurisdictional matters are not to be determined from the record then it necessarily results that parol evidence is competent to contradict the most solemn record that can be made, and a farther result is that the rule that a judgment is only voidable, never void, where the thing relied upon as impairing its validity is not apparent from an inspection of the record is completely overthrown. There can not be a division of a judgment; if it is conclusive as to one matter it is so as to all. A judgment affirms that the proceedings from the initial step in the controversy until the last are valid in every respect, and there is as little reason for allowing oral evidence against one part of the judgment as against another. To affirm that oral evidence may be given as to jurisdictional matters is to assert that no judgment is conclusive and that judicial records are of no more value than the declarations of individuals embodied in written records. We confess that we can see no solid ground upon which it can be

6 Am. St. R. 74; Crow *v.* Meyersieck, 88 Mo. 411; Cloud *v.* Inhabitants, 86 Mo. 357; Milner *v.* Shipley, 94 Mo. 106; Brown *v.* Woody, 64 Mo. 547; Howard *v.* Thornton, 50 Mo. 291; Blodgett *v.* Schaffer, 94 Mo. 652; Washington, etc., Co. *v.* Alexandria, etc., Co., 19 Gratt. 592, S. C. 100 Am. Dec. 710; Aspinwall *v.* Sabin, 22 Neb. 73, S. C. 3 Am. St. R. 258.

[1] Tallman *v.* Ely, 6 Wis. 244, 259. Some of the cases cited in the preceding note, unmindful of this rule, contain incorrect statements.

[2] Thompson *v.* Whitman, 18 Wall. 457; Knowles *v.* Gaslight, etc., Co., 19 Wall. 58. The reasoning of the court in the first of the cases cited would perhaps carry the doctrine farther, but the question for decision did not require an extension of the doctrine beyond that stated in the text. It is not easy to reconcile the cases cited with those of Croudson *v.* Leon-

held that oral evidence may be employed to contradict a judicial record, and we fully assent to the views of the authors and judges who deny the doctrine.[1] In some of the cases it is held that where a court of general superior jurisdiction exercises a special statutory jurisdiction the recitals of its record are not even *prima facie* sufficient to sustain jurisdiction. We regard this doctrine as radically unsound. If the court is one of general jurisdiction its exercise of power is presumed to be rightful and its decisions secure against collateral assaults, no matter what is the nature of the authority exercised in a particular case belonging to a class of which it has general jurisdiction.[2]

ard, 4 Cranch, 434; Hudson *v.* Guestier, 6 Cranch, 281, 284.

[1] Freeman on Judgments, §§ 133, 134, and cases cited; Van Fleet on Collateral Attack, p. 612; Morrill *v.* Morrill, 20 Ore. 96, S. C. 23 Am. St. R. 95; *Ex parte* Davis (Ala.), 11 So. R. 308; Martin *v.* Burns, 80 Texas, 676, S. C. 16 S. W. R. 1072; Lyne *v.* Sanford, 82 Texas, 58, S. C. 19 S. W. R. 847; Townsley, etc., Co. *v.* Fuller (Ark.), 22 S. W. R. 564; Williams *v.* Haynes, 77 Texas, 283, S. C. 19 Am. St. R. 752; Goodwin *v.* Sims, 86 Ala. 102, S. C. 11 Am. St. R. 21; Cully *v.* Shirk, 131 Ind. 76, S. C. 31 Am. St. R. 414; Hardy *v.* Beaty, 84 Texas, 562, S. C. 31 Am. St. R. 80. It is not easy to reconcile the broad doctrine of Thompson *v.* Whitman, 18 Wall. 457, with the general principle declared in such cases as Lacassagne *v.* Chapuis, 144 U. S. 119, S. C. 12 Sup. Ct. R. 659.

[2] In Potter *v.* Merchants' Bank, 28 N. Y. 641, 653, the court said: "If recitals are evidence of the performance of acts necessary to be done to create jurisdiction in one court and for one purpose, they must be for all. There can not be one rule of evidence for the superior and another for inferior courts." The court cited Bangs *v.* Duckenfield, 18 N. Y. 592; Barber *v.* Winslow, 12 Wend. 102; Jenks *v.* Stebbins, 11 Johns. 224; Shumway *v.* Stillwell, 4 Cowen, 292; Borden *v.* Fitch, 15 Johns. 121; Mills *v.* Duryea, and McElmoyle *v.* Cohen, 2 Am. Lead. Cases, 597, 603. Judge Seldon also delivered an opinion asserting the same general doctrine and citing People *v.* Nevins, 1 Hill, 154; Foot *v.* Stevens, 17 Wend. 483. If recitals have the effect thus attributed to them it must be true, as it seems to us, that whether the authority exercised is derived from the common law or from the statute, can make no difference. Where the court is one of superior general jurisdiction, however it may be as to other courts, the source of the authority is not of controlling importance, for it is the rank of the court that gives its records their force and effect. This is shown by the reasoning in the old case of Peacock *v.* Bell, 1 Saund. 73. The courts which assume that there is a difference between statutory and common law powers would, if their doctrine were carried to its logical conclusion, dwarf all American courts to special tribunals, since all American courts owe their jurisdiction for the most part to statutes.

§ 262. **Collateral proceedings.**—Our purpose does not require a very full definition of the term "collateral proceedings," nor any extended discussion of the general subject, but we have so frequently referred to such proceedings and so often used the term "collateral attack," that it seems necessary to give at least a rough definition of the terms we have employed. It is sufficient for our purpose to define a collateral attack as an attempt to avoid a judgment in an indirect mode and not in a proceeding prescribed by law, instituted for the purpose of vacating, reversing, reviewing or annulling the judgment.[1] As a rule a collateral attack is unavailing where there is jurisdiction,[2] for where jurisdiction exists the proceedings are not void, although erroneous. As indicated in the preceding paragraph and elsewhere, our opinion is that whether a judgment is or is not void because jurisdiction is lacking is to be determined from an examination of the record, and that extrinsic evidence can not be resorted to for the purpose of establishing the invalidity of a judicial proceeding.[3]

[1] In a late work this definition is given: "A collateral attack on a judicial proceeding is an attempt to avoid, defeat, or evade it, or to deny its force and effect in some manner not provided by law." It is also said: "Any proceeding provided by law for the purpose of avoiding or correcting a judgment is a direct attack which will be successful upon showing the error, while the attempt to do the same thing in any other way is a collateral attack which will be successful only upon showing a want of power." Van Fleet Collateral Attack, § 3. The Supreme Court of Oregon, in Morrill *v.* Morrill, 20 Ore. 96, S. C. 23 Am. St. 95, says that a collateral attack is "An attempt to impeach the decree in a proceeding not instituted for the express purpose of annulling, correcting, or modifying the decree or enjoining its execution." See, also, 12 Am. & Eng. Encyc. of Law, § 147.

[2] Some of the cases hold that where there is some jurisdiction but not so much as is assumed to be exercised, the proceedings may be assailed collaterally. We have elsewhere considered this question. *Post*, § 266.

[3] To the authorities heretofore cited may be added Newcomb *v.* Newcomb, 13 Bush. 544, S. C. 26 Am. R. 222; Harmon *v.* Moore, 112 Ind. 221. See, also, Mr. Freeman's note to Morrill *v.* Morrill (20 Ore. 95), 23 Am. St. R. 103. As we have already said, the doctrine as to foreign judgments is regarded as different from that which prevails where the judgment is a domestic one, and that the reasoning in Thompson *v.* Whitman, 18 Wall. 457, seems to favor the competency of extrinsic evidence in all cases. But as we have endeavored to show, sound reason is against the general doctrine; the cases we have cited and the authors we have referred to show that as yet the weight

§ 263. **Judicial proceedings are void, voidable and regular.** —We have already directed attention to the confusion that has arisen from confounding void proceedings with such proceedings as are only voidable, and it is not necessary to do more at this place than refer to some of the essential points in which such proceedings differ. A void judgment may be successfully assailed collaterally, but a voidable judgment can only be annulled or vacated in a direct proceeding. A voidable judgment is effective until vacated or reversed, but "a void judgment can not be regarded as having any legal existence in any court for any purpose."[1] Proceedings are regular when conducted in conformity to law, irregular when there is a departure from some legal rule or principle.[2] Where the departure from a rule is harmful to a party and constitutes material error the proceeding may be avoided in the mode prescribed by law, but an irregularity does not render a judgment void, nor, as is implied in what we have said, is a judgment ordinarily rendered voidable by a mere irregularity in the proceedings. The English courts give a different shade of meaning to the word "irregularity" from that usually assigned to it by the American courts, for they generally employ it as meaning what our courts would ordinarily denominate "a material error," "a harmful error," or "a prejudicial error."[3]

of authority is decidedly against that doctrine.

[1] Quoted from Mr. Freeman's note to Hull *v.* Hull (35 W. Va. 155), 29 Am. St. R. 800, 810, and by him attributed to the opinion in White *v.* Foote, etc., Co., 29 W. Va. 385, S. C. 6 Am. St. R. 650. See, upon the general subject of void and voidable proceedings, Taylor *v.* Coots, 32 Neb. 30, S. C. 29 Am. St. R. 426; Cheatham *v.* Whitman, 86 Ky. 614; Essig *v.* Lower, 120 Ind. 239. See, also, Mr. Freeman's note to Hahn *v.* Kelly, 94 Am. Dec. 762.

[2] "It has been laid down that an irregularity is either the omission to do something necessary for the due and orderly conducting of a legal proceeding, or doing it at unseasonable time or in an improper manner." Tidd's Pr. 512. Of course all wrong rulings are in a general sense irregular, no matter how important they may be, but, as a rule, an irregularity is not such a wrong ruling as will make a proceeding voidable, for ordinarily the term "irregularity" denotes a mistake of an immaterial character.

[3] In Holmes *v.* Russell, 9 Dowl. 487; Coleridge, J., said: "It is difficult sometimes to distinguish between an irregularity and a nullity, but I think the safest rule to determine what is an irregularity and what is a nullity is to

§ 264. **Objections to jurisdiction.**—Objections to the jurisdiction of the general subject may be made at any stage of the proceedings.[1] Such objections may be made on appeal, for they can not be waived.[2] This conclusion necessarily results from the principle that consent can not give jurisdiction of the general subject inasmuch as that can only be given by law. Waiver never operates in cases where there is no jurisdiction of the general subject, but, as indicated elsewhere, we think that where there is jurisdiction of the general subject, that is of the general class of cases, there may be an effective waiver of objections to jurisdiction of the particular subject.[3] If, for instance, a court of general jurisdiction has authority over

see whether a party can waive the objection. If he can waive it, it amounts to an irregularity; if he can not it is a nullity." In our courts, and so generally in the English, a party may waive almost any objection except such as goes to the subject-matter. Sage *v.* Railroad Company, 96 U. S. 712; Jones *v.* Andrews, 10 Wall. 327; Pearson *v.* Manufacturing Co., 14 Neb. 211; McCormick *v.* Pennsylvania, etc., Co., 49 N.Y. 303; Trenholm *v.* Morgan, 28 So. Car. 268, S. C. 5 S. E. R. 721; Strong *v.* Willey, 104 U. S. 512; Rhodes *v.* Russell, 32 So. Car. 585, S. C. 10 S. E. R. 828; Stearns *v.* Wright, 51 N. H. 600; Matter of New York, etc., Co., 35 Hun, 575. See, Elliott's Appellate Procedure, Chapter vi.

[1] New Orleans *v.* Scalzo, 41 La. Ann. 1141; Robinson *v.* Oceanic, etc., Co., 112 N. Y. 315; United States *v.* Yates, 6 How. (U. S.) 606; Doctor *v.* Hartman, 74 Ind. 221; Parker *v.* Morrill, 106 U. S. 1; Hart *v.* Burch, 31 Ill. App. 22, S. C. 22 N. E. R. 831; Rohn *v.* Harris, 31 Ill. App. 26, S. C. 22 N. E. R. 587; Douglass *v.* Neguelona, 88 Tenn. 769, S. C. 14 S. W. R. 283; Hoover *v.* York, 33 La. Ann. 652; Crawford *v.* Carothers, 66 Texas, 199, S. C. 18 S. W. R. 500; Fitzgerald *v.* Evans, 53 Texas, 461; United States *v.* Phillips, 6 Pet. 76.

[2] Cameron *v.* Hodges, 127 U. S. 322; Hegler *v.* Faulkner, 127 U. S. 482; Boys *v.* Simmons, 72 Ind. 593; Schuylkill County *v.* Boyer, 125 Pa. St. 226; Robertson *v.* Smith, 104 Ind. 79; Weeden *v.* Richmond, 9 R. I. 128; Commissioners Court *v.* Thompson, 18 Ala. 694; Damp *v.* Dane, 29 Wis. 419, 431; Chapman *v.* Barney, 129 U. S. 677; Fowler *v.* Eddy, 110 Pa. St. 117, S. C. 1 Atl. R. 789; Ware *v.* Henderson, 25 So. Car. 385; People *v.* Walter, 68 N. Y. 403; Willins *v.* Wheeler, 17 How. Pr. 93; Tiffany *v.* Gilbert, 4 Barb. 320; Fitch *v.* Devlin 15 Barb. 47; Hardin *v.* Trimmier, 30 So. Car. 391, S. C. 9 S. E. R. 342; Randleman, etc., Co. *v.* Simmons, 97 N. C. 89, S. C. 1 S. E. R. 923; Murry *v.* Burris, 6 Dak. 170, S. C. 42 N.W. R. 25; Hall *v.* Wadsworth, 30 W.Va. 55, S. C. 3 S. E. R. 29; Keokuk, etc., Co. *v.* Donnell, 77 Iowa, 221, S. C. 42 N. W. R. 176; Wilcox *v.* Wilcox, 63 Vt. 137, S. C. 21 Atl. R. 423; Laidley *v.* Kline, 21 W. Va. 21; Bacas *v.* Smith, 33 La. Ann. 139.

[3] *Ante*, §§ 238, 239, 240.

actions to recover real estate, but the venue of such actions is in the county where the land is situated, parties may by agreement submit a case for trial to a court sitting in a county other than that in which the particular parcel of land lies. Jurisdiction of the person may be waived by express agreement or by conduct, and the wide general rule is that where a party voluntarily appears and submits to the jurisdiction of the court it acquires authority over his person. The rule, indeed, is that a party who desires to object to the service of process or the like must present his objections at the earliest opportunity or his objection will be deemed waived.[1] Where a party is sued in the wrong county an appearance and submission for trial will waive his right to object.[2] Some of the courts hold that where a defendant is sued out of the county of his domicile before a justice of the peace he can not give the justice jurisdiction even by express agreement, because, as the cases say, jurisdiction can not be conferred by consent,[3] but it seems to us that these cases are not well decided. The jurisdiction conferred by consent in such cases as those under immediate mention is not jurisdiction of the general subject, for the agreement does not bear upon the question of the authority of the justice

[1] See, *post*, Process, Appearance. For a somewhat peculiar application of the general rule, see Crabb *v.* Orth (Ind.), 32 N. E. R. 711, and Quinn *v.* People (Ill.), 34 N. E. R. 148. An appearance, properly made, for the purpose of presenting jurisdictional questions, is not a waiver of the right to object. Foote *v.* Richmond, 42 Cal. 439; Aultman *v.* Steinan, 8 Neb. 109; Bank of the Valley *v.* Bank of Berkeley, 3 W. Va. 386; Coad *v.* Coad, 41 Wis. 23; Harkness *v.* Hyde, 98 U. S. 476; Tower *v.* Moore, 52 Mo. 118. The Court of Appeals of New York says: "It is very well settled that a party may waive a statutory and even a constitutional provision made for his own benefit, and having once done so he can not afterwards ask for its protection." *In re* Cooper, 93 N. Y. 507, citing Lee *v.* Tillotson, 24 Wend. 337; Embury *v.* Conner, 3 N. Y. 511. See, generally, Polk County *v.* Hierb, 37 Iowa, 361.

[2] Ohio Southern, etc., Co. *v.* Morey, 47 Ohio St. 207, S. C. 7 Lawy. R. Anno. 701; Harrington *v.* Heath, 15 Ohio, 483, 487; Elliott *v.* Lawhead, 43 Ohio St. 171; O'Neal *v.* Blessing, 34 Ohio St. 33; Thomas *v.* Pennrich, 28 Ohio St. 55; Fitzgerald *v.* Cross, 30 Ohio St. 444. See, generally, Kitchen *v.* Williamson, 4 Wash. C. C. 84; Gracie *v.* Palmer, 8 Wheat. 699; Raney *v.* McRea, 14 Ga. 589; Campbell *v.* Wilson, 6 Texas, 379; State *v.* Judge, 21 La. Ann. 258.

[3] Chapman *v.* Morgan, 2 G. Greene (Iowa), 374; Boyer *v.* Moore, 42 Iowa, 544; McMeans *v.* Cameron, 51 Iowa, 691.

over the general class of cases, but goes to the question of the defendant's privilege to insist upon his right to be sued in the geographical subdivision in which he resides. We think the better reason is clearly with the courts which assert a different doctrine.

§ 265. **Loss of jurisdiction.**—The general rule is that if a court once rightfully acquires jurisdiction it continues until the final disposition of the controversy unaffected by intervening errors or irregularities. As we have elsewhere said, jurisdiction extends beyond the judgment to the control of process and remains in the court which first acquires it.[1] A court may exhaust its jurisdiction in a particular instance by doing all that the law empowers it to do, but, ordinarily, jurisdiction is not entirely exhausted when a judgment is entered. It is true that having rendered and recorded one final judgment it can not render another in the same case, except, of course, where the first is vacated, or annulled, but the entry of judgment does not terminate the jurisdiction altogether, since there remains the right and power to control process. The decisions which seem to adjudge that jurisdiction is exhausted by the giving and registering of a judgment,[2] must, as we suppose, be understood as meaning no more than that a second final judgment can not be rendered in the same case. There may, it is evident, be cases where the giving of a final judgment or the making of a final order completely terminates the jurisdiction of the tribunal, for there are cases in which judgments are self-executing and there is no process to be issued.[3] Some of the cases go very far; thus it has been held that where an order is made appointing an administrator, the jurisdiction of the

[1] *Ante*, §§ 247, 248.

[2] State *v.* Railroad Co., 16 Fla. 708; Fossett *v.* McMahan, 74 Texas, 546. We think there is a difference between cases wherein jurisdiction is lost and cases in which it is exhausted by exercise. In the one class of cases jurisdiction is taken away by law, or ceases to exist because of some act of the tribunal, while in the other the authority is taken up and its existence in the particular case terminated by its exercise in that case.

[3] Elliott's Appellate Procedure, §§ 392, 393.

court as to that particular matter is at an end,[1] and, for similar reasons, it has been adjudged that if there be a judgment declaring that an estate has been fully administered and the order is consummated by distribution to the heirs the jurisdiction in the specific matter is exhausted.[2] It is at least questionable whether the cases just referred to do not carry the doctrine too far in declaring, as they do, that the proceedings were void, since whether there was a prior administrator duly appointed would seem to be a question for the court to decide in the particular instance, and if so it is difficult to perceive how its decision could, at most, be anything more than erroneous. If, in such case, an issue had been framed by the one party affirming and the other denying that there was an administrator in office, a wrong judgment on that issue would not, it is quite certain, render the appointment of a second administrator void. It is difficult, in the class of cases now under discussion, to mark the line between proceedings that are void and those that are only voidable, but, as it seems to us, a proceeding is not void where there is jurisdiction of the general class of cases, and nothing more than a wrongful exercise of authority in a particular case either because of a mistake of fact or of law, for the court having authority over the general class of cases must, as a general rule, have jurisdiction to determine whether or not that authority has been lost or exhausted. The doctrine that a court may lose jurisdiction of a cause so that its proceedings become absolute nullities is carried to a very great length in a case wherein it was held that the extinguishment of

[1] Griffith *v.* Frazier, 8 Cranch, 9; Springs *v.* Erwin, 6 Ired. Law, 27; Ryno *v.* Ryno, 27 N. J. E. 522. See Mr. Freeman's Note to Morrill *v.* Morrill, 23 Am. St. R. 116.

[2] Fisk *v.* Norvel, 9 Texas, 13, S. C. 58 Am. Dec. 128. See, also, Francis *v.* Hall, 13 Texas, 193; Giddings *v.* Steele, 28 Texas, 750. Upon the general subject, see cases of Smith *v.* Woolfolk, 115 U. S. 143; Lindsay *v.* Jaffray, 55 Texas, 626; Croxton *v.* Renner, 103 Ind. 223, S. C. 2 N. E. R. 601; Boyd *v.* Swing, 38 Miss. 182, 196. As indicating a somewhat different doctrine from that declared in Fisk *v.* Norvel, *supra*, see Shephard *v.* Rhodes, 60 Ill. 301; Kittredge *v.* Folsom, 8 N. H. 98; Peebles *v.* Watts, 9 Dana, 102; Broughton *v.* Bradley, 34 Ala. 694, S. C. 73 Am. Dec. 474; Jackson *v.* Reeve, 44 Ark. 496.

the cause of action terminated the proceeding and rendered the judgment void.[1] In our opinion, the doctrine referred to is opposed to principle and authority.[2] The general rule, as declared and enforced in many cases is, that jurisdiction, once vested, continues, and that whether it attaches depends upon the facts existing at the time jurisdiction is first asserted and acquired, not upon subsequent events.[3] While the general rule is that jurisdiction is not lost because of mistakes of law or of fact made in the progress of a case, yet, according to some of the decisions, when an order is made which denies a party a right to be heard and the order defeats the provisions of the organic law giving a party his day in court, there is a loss of jurisdiction.[4] This doctrine carefully applied may not be wrong, but

[1] Two Rivers, etc., Co. *v.* Beyer, 74 Wis. 210, S. C. 17 Am. St. R. 131, citing *In re* Pierce, 44 Wis. 411; *In re* Crow, 60 Wis. 349. We can not discover that the cases cited give support to the doctrine of the able court, for they belong to an essentially different class of cases. The court certainly had jurisdiction at the outstart, and an extinguishment of the cause of action could not, as we believe, make the proceedings *coram non judice*.

[2] We regard Mr. Freeman's criticism of the case as just. See 17 Am. St. R. 143. See, generally, Bateman *v.* Miller, 118 Ind. 345, S. C. 21 N. E. R. 292.

[3] Morgan's Heirs *v.* Morgan, 2 Wheat. 290; United States *v.* Dawson, 15 How. (U. S.) 467; Culver *v.* Woodruff, etc., Co., 5 Dill. (U. S.) 392; Conolly *v.* Taylor, 2 Pet. 556; Mullen *v.* Torrance, 9 Wheat. 537; *Ex parte* Phillips, 57 Miss. 357; Stuart *v.* Allen, 16 Cal. 473, S. C. 76 Am. Dec. 551; Gilmer *v.* Grand Rapids, etc., 16 Fed. R. 708; Raymond *v.* Butterworth, 139 Mass. 471; Tapley *v.* Martin, 116 Mass. 275. See, generally, Boyer *v.* Berryman, 123 Ind. 451, S. C. 24 N. E. R. 249; Stanley *v.* Barker, 25 Vt. 507; Spafford *v.* Richardson, 13 Vt. 224; Clarke *v.* Mathewson, 15 Pet. 164; Trigg *v.* Conway (Hemp.), U. S. 711; Upton *v.* New Jersey, etc., Co., 25 N. J. E. 372; Bates *v.* McConnell, 32 Kan. 1, S. C. 3 Pac. R. 515; Hooks *v.* Mores, 8 Ired. Law. 88, 90; Egerton *v.* Hart, 8 Vt. 207.

[4] Windsor *v.* McVeigh, 93 U. S. 277; Lindsay *v.* Jaffray, 55 Texas, 626; Underwood *v.* McVeigh, 23 Gratt. 409; Henry *v.* Carson, 96 Ind. 412. See, generally, Dean *v.* Nelson, 10 Wall. 158; Lasere *v.* Rochereau, 17 Wall. 437; Dorr *v.* Rohr, 82 Va. 359, S. C. 3 Am. St. R. 106. See, generally, Pennywit *v.* Foote, 27 Ohio St. 600, S. C. 22 Am. R. 340; Blackwell *v.* Willard, 65 N. C. 555; Cuyler *v.* Ferrill, 1 Abb. (U. S.) 169; Van Epps *v.* Walsh, 1 Woods, 598; Dorr *v.* Gibbony, 3 Hughes, 382. The case of Windsor *v.* McVeigh, is often referred to as sustaining the doctrine that judgments in excess of the court's jurisdiction are void. In Henry *v.* Carson, *supra*, there was an evident misunderstanding and misapplication of the rule declared in Windsor *v.* McVeigh, Carolan *v.* Carolan, 4 Ark. 511. We have considered Windsor *v.* McVeigh upon

certainly it is one to be rigidly limited and applied with scrupulous caution, for if it be unduly extended there will be an end to the doctrine that judgments import absolute verity. Titles will be made insecure and litigation greatly increased if the old rule is much restricted, and these are evils that the old courts and writers thought it of the highest importance to prevent. Innovations upon the long settled rules, we, for our part, look upon as not conducive to good results nor consistent with sound principle, and we can not but think some of the courts have gone too far in the direction of encouraging collateral attacks upon the ground of loss of jurisdiction. The legislature may take away jurisdiction that it has conferred, but jurisdiction conferred by the constitution it can not divest.[1] The general rule is that the jurisdiction of courts having a permanent existence, a record, and jurisdiction of a general class of cases can not be taken away by the legislature except by express words or necessary implication.[2] It is very generally held that where jurisdiction existing in one tribunal is also conferred upon another that of the first is not divested, but the two tribunals become courts of concurrent jurisdiction.[3] The accepted doc-

another phase of the subject in the paragraph which follows and also in a preceding paragraph.

[1] Jones *v.* Smith, 14 Mich. 334; Callahan *v.* Judd, 23 Wis. 343; Dillard *v.* Noel, 2 Ark. 449; Commonwealth *v.* Commissioners, 37 Pa. St. 237; Meyer *v.* Kalkmann, 6 Cal. 582; Landers *v.* Staten Island, etc., 14 Abb. Pr. (N.S.) 346; Connors *v.* Gory, 32 Wis. 518; State *v.* Mace, 5 Md. 337; State *v.* Northern, etc., Co., 18 Md. 193; Vail *v.* Dinning, 44 Mo. 210; Averell *v.* Perrott, 74 Mich. 296, S. C. 41 N. W. R. 929; *ante*, §§ 145, 146, 147.

[2] *In re* Twenty-eighth Street, 102 Pa. St. 140; Richards *v.* Dyke, 3 Q. B. 256; Reeves *v.* White, 17 Q. B. 995; Cates *v.* Knight, 3 T. R. 442; Rex *v.* Mayor of London, 9 B. & C. 1; Commonwealth *v.* Hudson, 11 Gray, 64; King *v.* Roedale Land Co., 6 Eng. L. & Eq. 241; Gould *v.* Hayes, 19 Ala. 438; State *v.* Moore, 19 Ala. 514; State *v.* Bell, 5 Port. (Ala.) 365; Commonwealth *v.* McClosky, 2 Rawle (Pa.), 369; Tackett *v.* Vogler, 85 Mo. 480; Dick's Appeal, 106 Pa. St. 589; Fidelity, etc., Co. *v.* Gill, etc., Co., 25 Fed. R. 737; Barnawell *v.* Threadgill, 5 Ired. Eq. 86; Berkowitz *v.* Lester, 121 Ill. 99; Taylor *v.* Williams, 78 Va. 422; Hurth *v.* Bower, 30 Hun, 151; Jenkins *v.* Crevier, 50 N. J. L. 151; *In re* Creighton, 12 Neb. 280; Catlin *v.* Wheeler, 49 Wis. 507.

[3] Hays *v.* McNealy, 16 Fla. 409; Bedwell *v.* Jones, 9 Lea (Tenn.), 168. See, generally, Thompson *v.* Morton, 2 Ohio St. 26; Claflin *v.* Houseman, 93 U. S. 130; James *v.* Belding, 33 Ark. 536; Wente *v.* Young, 12 Hun, 220.

trine is that where jurisdiction is taken away from a court by a statute containing no reserving clause saving pending suits or actions jurisdiction as to such suits or actions is lost.[1] But the destruction of jurisdiction does not affect judgments rendered prior to the enactment of the statute which destroys it. Jurisdiction may be lost by a transfer of the case from one tribunal to another according to law.

§ 266. **Exceeding jurisdiction.**—Where a court exceeds its jurisdiction by entering a judgment beyond and outside of the general subject over which the law gives it jurisdiction, or gives a judgment which it can not possibly have power to render, the judgment is void.[2] There are cases which warrant,—indeed, require,—a broader statement than that made by us,[3]

[1] Hollingsworth *v.* Virginia, 3 Dall. 378; Merchants Ins. Co. *v.* Ritchie, 5 Wall. 541; Grant *v.* Grant, 12 So. Car. 29, S. C. 32 Am. R. 506; Phillips *v.* Hopwood, 10 B. & C. 39; Rex *v.* Justices, 3 Burr. 1456; Road in Hatfield Township, 4 Yeates, 392; Veats *v.* Danbury, 37 Conn. 412; Gilleland *v.* Schuyler, 9 Kan. 569; Church *v.* Rhodes, 6 How. Pr. 281; Smith *v.* Arrapahoe, etc., 4 Colo. 235; State *v.* Brookover, 22 W. Va. 214; New London, etc., Co. *v.* Boston, etc., Co., 102 Mass. 386; South Carolina *v.* Gaillard, 101 U. S. 433; Commonwealth *v.* Standard Oil Co., 101 Pa. St. 119; Holmes *v.* French, 68 Me. 525; McNulty *v.* Batty, 10 How. 72; Assessors *v.* Osbornes, 9 Wall. 567; United States *v.* Tynen, 11 Wall. 88; Baltimore, etc., Co. *v.* Grant, 98 U. S. 398; Rice *v.* Wright, 46 Miss. 679; Lamb *v.* Schottler, 54 Cal. 319; Wade *v.* St. Mary, etc., School, 43 Md. 178; Saco *v.* Gurney, 34 Me. 14; Kruse *v.* Wilson, 79 Ill. 233; Carson *v.* Commissioners, 64 N. C. 566; Hunt *v.* Jennings, 5 Blackf. 195.

[2] Where the court gives a judgment which it is not possible for it to give, it goes beyond its authority over the general subject, insomuch as it does what it has no color of right or semblance of power to do.

[3] The decision in Windsor *v.* McVeigh, 93 U. S. 274, is usually considered as declaring the broad doctrine that a judgment in excess of jurisdiction in the particular case is void, although the case may be a member of a general class of which the court has jurisdiction. It is, however, contended by some of the authorities that the case decides no more than that where the right to appear and be heard is denied the judgment is void because there is not due process of law. Van Fleet Collateral Attack, § 386. We think the decision under immediate mention is justly subject to the criticism given it by Mr. Freeman, and that on principle it can not be upheld. Freeman on Judgments, § 118. The opinion is not satisfactory in its reasoning, and in our opinion the dissenting justices, Miller, Bradley and Harlan, were right. But the decision has received approval. United States *v.* Walker, 109 U. S. 258,

but we can not, as we have elsewhere indicated, believe that the cases which so widely extend the rule are well decided. It seems to us that so long as the court confines its decision to the general subject in a case where it has jurisdiction of the person, its judgment, although erroneous, is not a mere nullity which may be everywhere disregarded. If the court has, under any circumstances, authority to render the judgment it gives, the judgment is not absolutely void, although it may be erroneous.[1] As was shown in the preceding paragraph, the general rule (and it is one long since established and one that for many years has stood unquestioned) is that jurisdiction depends upon the facts existing at the time the suit or action is begun, and not upon subsequent events, and this being true, it is difficult, if not impossible, to perceive how a judgment can be void so long as the court does not travel outside of the general authority with which it is entrusted. In every erroneous judgment there is a departure from the law, but not every erroneous judgment is void. If it be once assumed that a judgment is void because the court has not obeyed the law or because the court has not kept within the limits of the law in the particular instance, or has not given the proper judgment, then the line between void and voidable proceedings ceases to exist and there is no rule by which courts can be guided, so that, whether a proceeding is or is not void becomes a matter of uncertainty dependent upon the arbitrary decision of a particular tribunal. We do not question the soundness of the doctrine that when the court undertakes to render a judgment in a case where it has no possible power to render such a judgment as it does render, the judgment is void; on the contrary, we assert that this doctrine is perfectly sound, but we also affirm that where there is general jurisdiction of the sub-

S. C. 3 Sup. Ct. R. 277, 283; Dorr v. Rohr, 82 Va. 359, S. C. 3 Am. St. R. 106; Henry v. Carson, 96 Ind. 412. See, Lasere v. Rochereau, 17 Wall. 437; Earle v. McVeigh, 91 U. S. 503.

[1] In the case of Tallman v. McCarty, 11 Wis. 401, the court employed this language: "Had the court or tribunal power, under any circumstances, to make the order or perform the act? If this be answered in the affirmative, then its decision upon those circumstances becomes final and conclusive."

ject the judgment is not void although it may not be such as the law requires, if it is one which the court has authority to render under any circumstances. If a court of criminal jurisdiction should render a civil judgment that judgment would, of course, be void, since it would be entirely outside of and beyond the jurisdiction of the tribunal, but if a court having general civil jurisdiction should award damages and also possession of land where only damages were recoverable the judgment would not be void, although it might be radically erroneous. When the tribunal is expressly or impliedly prohibited from making allowances or giving judgments in a class of cases, its judgments are void, since the interdiction deprives it of jurisdiction of the general class. If, for instance, a court has authority to award compensation to individuals but is denied the power to award fees or salaries to public officers, its judgment in awarding fees or salaries would be a mere nullity, for such a judgment would be outside of its general jurisdiction.[1] Where the record affirmatively makes it appear that the particular judgment is one that the court can not render because of lack of power to render it, there is no violation of principle in holding the proceedings void,[2] since the power which supports judgments is absent, but it is otherwise where there is power to render a judgment of the same nature and class as that rendered. If the judgment is of the same class and nature as that which is proper in the general class of cases it is not void, because it is not such a judgment as the law re-

[1] Bridges *v.* Clay County Supervisors, 57 Miss. 252. See Bigelow *v.* Forrest, 9 Wall. 339, where, as said in United States *v.* Walker, 109 U. S. 258, S. C. 3 Sup. Ct. R. 277, it is held that the court could not do what an act of Congress forbids. This is in accordance with the cases which adjudge that a court can not adjudge land to be sold where the statute forbids a sale. Elliott *v.* Frakes, 71 Ind. 412; Pepper *v.* Zahnsinger, 94 Ind. 88; Hutchinson *v.* Lemcke, 107 Ind. 121, S. C. 8 N. E. R. 71; Seamster *v.* Blackstock, 83 Va. 232, S. C. 5 Am. St. R. 262; Anthony *v.* Kasey, 83 Va. 338, S. C. 5 Am. St. R. 277; Wade *v.* Hancock, 76 Va. 620.

[2] *In re* Permstick, 3 Wash. 672, S. C. 28 Am. St. R. 80, citing People *v.* Liscomb, 60 N. Y. 559, S. C. 19 Am. R. 211; *In re* Rafferty, 1 Wash. 382. See, also, Cornett *v.* Williams, 20 Wall. 226; *Ex parte* Lange, 18 Wall. 163; Little *v.* Evans, 41 Kan. 578; *In re* Mills, 135 U. S. 263, S. C. 10 Sup. Ct. R. 762.

quires. If, in other words, there is a mistake of law or fact, no matter how radical, the judgment is not void if it is one which, under any circumstances reasonably conceivable, it was within the power of the court to render. Where, as we have suggested in the note to the first sentence of this paragraph, the court gives a judgment which it can not under any circumstances have authority to pronounce, it, in effect, goes outside of the subject over which it is given authority, since it is not invested with authority to render a judgment of an essentially different kind or nature from that which is proper in the particular case before it for adjudication. There is substantial agreement upon the proposition that a judgment which the court can not possibly pronounce is void,[1] but as to what judgments are within the rule there is a wide diversity of opinion. Some of the cases so much extend the doctrine as to practically break down the partition between void and voidable proceedings. To us it seems that unless it is manifest from an inspection of the record, unaided by extrinsic evidence, that the judgment is clearly and unmistakably of a kind or nature which the court could not render under any circumstances reasonably conceivable, the proceedings are not void although they may be voidable.[2] As we have elsewhere substantially

[1] Houser *v.* McKennon, 60 Tenn. 287; Jones *v.* Jones, 3 Dev. Law. 360; Griswold *v.* Sheldon, 4 N. Y. 580; United States *v.* Labette County, 7 Fed. R. 318; Lane *v.* Crosby, 42 Me. 327; Berry *v.* Makepeace, 3 Ind. 154.

[2] Gillitt *v.* Truax, 27 Minn. 528; Chaffee *v.* Hooper, 54 Vt. 513; Turpin *v.* Dennis, 139 Ill. 274, S. C. 28 N. E. R. 1065; Holderman *v.* Thompson, 105 Ind. 112, S. C. 5 N. E. R. 175; Delafield *v.* Brady, 108 N. Y. 524; Swiggert *v.* Harber, 5 Ill. 364, S. C. 39 Am. Dec. 418; Rockwell *v.* Jones, 21 Ill. 279; Ogden *v.* Walters, 12 Kan. 282; Maloney *v.* Dewey, 127 Ill. 395, S. C. 19 N. E. R. 848; Moore *v.* Jeffers, 53 Iowa, 202, S. C. 4 N. W. R. 1084; People *v.* Cavanagh, 2 Park. Cr. R. 650; *In re* Schen, 74 N. C. 607; *In re* Kaminsky, 70 Mich. 653, S. C. 38 N. W. R. 659, Sennott's Case, 146 Mass. 489, S. C. 16 N. E. R. 448; Crandall, Petition of, 34 Wis. 177; *In re* Graham, 74 Wis. 450, S. C. 43 N. W. R. 148; *Ex parte* Bond, 9 So. Car. 80, S. C. 30 Am. R. 20; Miller *v.* Finkle, 1 Park. Cr. R. 374; *In re* Petty, 22 Kan. 477, 484; *Ex parte* McGill, 6 Texas App. 498; Bernstein *v.* Hobelman, 70 Md. 29, S. C. 16 Atl. R. 374; Austin *v.* Charlestown, 8 Metcf. (Mass.) 196, S. C. 41 Am. Dec. 497. Holding the strict doctrine are the following cases: Fithian *v.* Monks, 43 Mo. 502; Reynolds *v.* Stockton, 43 N. J. Eq. 211, S. C. 3 Am. St. R. 305; Atwood *v.* Frost, 51 Mich. 369, S. C. 16 N. W. R. 685; Robinson

said, where a judgment is clearly and unmistakably beyond and outside of the range or scope of the issues, it may be void, but it is only in rare and extreme cases that a judgment can be said to be a nullity, because outside of the issues. If within the range of the issues there is no such excess of jurisdiction as will make the proceedings absolutely void.[1] We think this general doctrine applies where parties waive formal pleadings, as well as where formal pleadings are filed.[2]

§ 267. **Estoppel to deny jurisdiction.** — As consent can neither create a judicial tribunal nor confer upon one created by law jurisdiction of the general subject, it is only in rare cases that a party is estopped from denying that the court has jurisdiction of the general subject or from assailing the existence of a tribunal not created by law. As a general rule, subject to very few exceptions, there is always open to the parties the right to object to the jurisdiction of a court over the subject-matter.[3] A party may appeal from a void judgment and thus effectively remove its apparent force,[4] but he is not bound

v. Redman, 2 Duvall (Ky.), 82; Feeley's Case, 12 Cush. 598; Merkee *v.* City of Rochester, 13 Hun, 157; Kendall *v.* Powers, 4 Metcf. 553; People *v.* Kelly, 97 N. Y. 212; *Ex parte* Page, 49 Mo. 291; Peckham *v.* Tomlinson, 6 Barb. 253; *Ex parte* Erdmann, 88 Cal. 579, S. C. 26 Pac. R. 372; *Ex parte* Arras, 78 Cal. 304, S. C. 20 Pac. R. 683; State *v.* Gray, 37 N. J. L. 368; *In re* Price, 6 New South Wales, 140; *Ex parte* Martin, 46 Fed. R. 482; Corwithe *v.* Griffing, 21 Barb. 9.

[1] O'Reilly *v.* Nicholson, 45 Mo. 160; Board of Supervisors *v.* Mineral Point, etc., Co., 24 Wis. 93; Tolman *v.* Jones, 114 Ill. 147, 154; Davenport, etc., Co. *v.* Schmidt, 15 Iowa, 213; Baizer *v.* Lasch, 28 Wis. 268. But see, Reynolds *v.* Stockton, 140 U. S. 254; Waterman *v.* Lawrence, 19 Cal. 210.

[2] Fletcher *v.* Holmes, 25 Ind. 458, 463; Indianapolis, etc., Ry. Co. *v.* Sands, 133 Ind. 433, S. C. 32 N. E. R. 722.

[3] *Ante*, §§ 238, 264; Wildman *v.* Rider, 23 Conn. 172; Western Union, etc., Co. *v.* Taylor, 84 Ga. 408, S. C. 8 Lawy. R. Anno. 189; Roy *v.* Horsley, 6 Ore. 382, S. C. 25 Am. R. 537; Bent *v.* Graves, 3 McCord, 280, S. C. 15 Am. Dec. 632; Block *v.* Henderson, 82 Ga. 23, S. C. 14 Am. St. R. 138.

[4] Trullenger *v.* Todd, 5 Oregon, 36; Smith *v.* Ellendale Co., 4 Oregon, 70; Coffey *v.* Wilson, 2 Ala. 701; Evans *v.* Adams, 3 Green (N. J.), 373; People *v.* Ferris, 35 N. Y. 125; Cain *v.* Goda, 84 Ind. 209; Brown *v.* Goble, 97 Ind. 86; Louisville, etc., Co. *v.* Lockridge, 93 Ind. 191; United States *v.* Huckabee, 16 Wall. 414. See, generally, Mansfield, etc., Co. *v.* Swan, 111 U. S. 379; Capron *v.* Van Noorden, 2 Cranch, 126. There is nothing illogical or inconsistent in allowing an appeal from

to do so, for a suit or action in a court having no jurisdiction of the general subject is itself a nullity and may be so treated everywhere. The party by whom the jurisdiction of the court is invoked may deny it unless he has by his own acts or conduct created an estoppel precluding him from denying the right of the court to exercise authority, but an estoppel is not created by the mere act of bringing suit.[1] Where, however, a plaintiff has invoked the exercise of jurisdiction, has caused process to issue and has enforced payment of the judgment by the sale of the defendant's property, he will not be heard to object that the court did not have jurisdiction of the subject.[2] The same general principle is enforced in the case which holds that one who uses a judgment as a defense is estopped to aver that the court which rendered it had no jurisdiction.[3] The doctrine of estoppel was carried very far in a case wherein it was held that a prosecution before a tribunal having no jurisdiction barred a second prosecution where the judgment in the first was acquiesced in by the defendant.[4] The case to which we have just referred is not entirely unsupported by reason, for it is not very different, if different at all in principle, from those cases which hold that a party who accepts a benefit under an unconstitutional legislative enactment is estopped to question its validity.[5] There are many cases adjudging that a party who receives and retains money or property under a void sale

a void judgment, for the judgment being a matter of record may cloud titles or embarrass parties, and they have a clear right to cause condemnation to be pronounced upon it. They are not, of course, bound to appeal, but they have a right to appeal, if they so elect, and secure a judgment clearing the record of all clouds and shadows.

[1] Bell *v.* Fludd, 28 So. Car. 313; Block *v.* Henderson, 82 Ga. 23, S. C. 14 Am. St. R. 138.

[2] Reichert *v.* Voss, 78 Ga. 54.

[3] District Township *v.* Independent District, 69 Iowa, 88, S. C. 28 N.W. R. 449. *Contra*, Wilbur *v.* Abbott, 60 N. H. 40.

[4] McGinnis *v.* State, 9 Humph. 43, S. C. 49 Am. Dec. 697.

[5] Daniels *v.* Tearney, 102 U. S. 415; Vickery *v.* Blair (Ind.), 32 N. E. R. 880; Ferguson *v.* Landram, 1 Bush. 548; State *v.* Mitchell, 31 Ohio St. 592; Embury *v.* Conner, 3 N. Y. 511, S. C. 53 Am. Dec. 325; Van Hook *v.* Whitlock, 26 Wend. 43; Burlington, etc., Co. *v.* Stewart, 39 Iowa, 267; Perryman *v.* Greenville, 51 Ala. 507; Treasurer, etc., *v.* Martin (Ohio), 33 N. E. R. 1112; Elliott on Roads and Streets, p. 422.

can not successfully prosecute an action to annul it, and so there are cases adjudging that void proceedings conducted by guardians or administrators can not be avoided by persons who knowingly receive and retain benefits derived from such proceedings.[1] We think it may be safely said that an affirmation of a proceeding will estop a party from assailing the jurisdiction of the tribunal in which it was conducted where the facts are such as to make it against equity and good conscience to permit him to retreat from his position and thereby entail loss upon another who is without fault. This doctrine does not, by any means, imply that consent may confer jurisdiction; it simply asserts that the party is concluded from making any question as to jurisdiction and holds him bound by his acts or conduct subsequent to the judgment or decree of the court. There is, therefore, no collision with the general rule that jurisdiction of the general subject can not be conferred by agreement. The rule respecting jurisdiction of the person is, as we have elsewhere said, radically different from that respecting jurisdiction of the subject. Jurisdiction of the person is always waived by a failure to object where an opportunity for objecting is presented, so that it is never essential that facts sufficient to create an estoppel should exist. There is, however, a class of cases presenting a peculiar phase of the subject. The class we refer to is composed of those cases in which a party alleges a cause of action or defense in a proceeding wherein such a cause of action or defense could not be adjudicated had not the party himself asked an adjudication. In

[1] Upon the general subject, see Denver, etc., Water Co. *v.* Middaugh, 12 Col. 434, S. C. 13 Am. St. Rep. 234; Hartwell *v.* Mutual, etc., Co., 50 Hun, 497; Edel *v.* McCone, 31 N. Y. S. Rep. 553; Lathrop *v.* Doty, 82 Iowa, 272, S. C. 47 N. W. R. 1089; Fries *v.* Fries, 34 Ill. App. 142; Koch *v.* Losch, 31 Neb. 625, S. C. 48 N. W. R. 471; Carrigan *v.* Drake, 36 So. Car. 354, S. C. 15 S. E. R. 339; Brown *v.* Peters, 94 Ala. 459, S. C. 10 So. R. 261; Fox *v.* Minor, 32 Cal. 111; McLean *v.* Hugarin, 13 John. 184; Duff *v.* Wynkoop, 74 Pa. St. 300; Woodstock Iron Co. *v.* Fullenwider, 87 Ala. 584; Kile *v.* Town of Yellowhead, 80 Ill. 208. In Arthur *v.* Isreal, 15 Colo. 147, S. C. 22 Am. St. Rep. 381, a woman was held estopped by her acts from denying the validity of a divorce as against the heirs of her deceased husband, although it was void for want of jurisdiction.

such cases there is an estoppel, or at all events, such an acquiescence as cuts off a right to object after decree or judgment.[1] Much the same in principle as the class of cases just referred to are those in which it is held that a party who secures the removal of a case from a state court to a Federal court can not after trial and judgment or decree be heard to aver that the court to which the case was removed had no jurisdiction.[2] Cases of the character of those just referred to rest, as we believe, upon the doctrine of estoppel. There is much more than a mere waiver, there is the representation of facts, and whether the representation is express or implied the party may not withdraw it after it has been acted upon by his adversary and the court. We are unable to perceive any reason why the doctrine should not apply to all cases where there is a representation of such facts as confer jurisdiction, since it is the facts as stated and not the mere consent that must control.[3] It is bad enough to permit a party who, by suing, asserts that the court in which he sues has jurisdiction to subsequently deny that jurisdiction existed, since he vexes his adversary and puts

[1] Lounsbury *v.* Catron, 8 Neb. 469; Shellenbarger *v.* Biser, 5 Neb. 195; Bollong *v.* Schuyler National Bank, 26 Neb. 281, S. C. 3 Lawy. Rep. Anno. 142. The doctrine of the cases to which we refer is essentially the same in principle as that asserted by the courts which hold that although jurisdiction is properly in equity, a judgment by a court of law is not void, although if objection had been made the error would have been fatal on appeal. Amis *v.* Myers, 16 How. (U. S.) 492, 493; Town of Wentz *v.* Cook, 108 N. Y. 504, S. C. 15 N. E. R. 541; Crissfield *v.* Murdock, 127 N.Y. 315; Chesapeake, etc., Co. *v.* Mackenzie, 74 Md. 36, S. C. 21 Atl. R. 690. *Ante*, §§ 238, 239. Elliott's Appellate Procedure, § 658, notes 3, 4, § 766, notes 1, 4.

[2] In Bushnell *v.* Kennedy, 9 Wall. 387, the court said: "The first act of the defendant, indeed, under the 12th section, is something more than consent, something more than a waiver of objection to jurisdiction, it is a prayer for the privilege of resorting to federal jurisdiction, and he can not be permitted afterwards to question it." Much to the same effect is the decision in Sayles *v.* Northwestern Ins. Co., 2 Curtis, 212.

[3] Railway Co. *v.* Ramsey, 22 Wall. 322; Thornton *v.* Baker, 15 R. I. 553, S. C. 2 Am. St. R. 925, citing Ela *v.* McConihe, 35 N. H. 279; Hines *v.* Mullins, 25 Ga. 696; Brown *v.* Haines, 12 Ohio, 1; Mandeville *v.* Mandeville, 35 Ga. 243; Harbin *v.* Bell, 54 Ala. 389; Turner *v.* Billagram, 2 Cal. 520; Miltimore *v.* Miltimore, 40 Pa. St. 151; Potter *v.* Adams Ex. *et al.*, 24 Mo. 159; Lovelady *v.* Davis, 33 Miss. 577.

him to expense, and the rule which permits this ought not to be extended. There is much reason for limiting it and none for extending. Where there are any affirmative acts asserting the validity of the judgment the party who by his voluntary act secured it should be held estopped to deny the existence of jurisdiction, even though such acts might not in ordinary cases constitute an estoppel. The cases which restrict the rule are supported by reason and entitled to favor.[1] The doctrine of the cases which adjudge that a bond given in a suit for injunction or in attachment proceedings and like cases is void if there is no jurisdiction,[2] we regard as unsound, and those that assert the contrary as sound.[3] It seems quite clear that one who chooses his forum and executes a bond in the proceedings he voluntarily institutes, is liable on that bond to the extent of the injury inflicted upon the person against whom he proceeds without regard to the question of jurisdiction or no jurisdiction. The question of jurisdiction may rightfully have some influence upon the measure of damages, since the extent of the loss or injury may depend upon how far the case proceeds, but it can have none upon the question of the right to recover for the loss actually suffered or the injury inflicted. It is but poor comfort to one in whose favor a plaintiff executes a bond to be told, that, although the plaintiff wrongfully dragged you into

[1] Wells *v.* Scott, 4 Mich. 347; Tower *v.* Lamb, 6 Mich. 362; Randolph County *v.* Ralls, 18 Ill. 29; Montgomery *v.* Heilman, 96 Pa. St. 44; Bellandes' Succession, 42 La. Ann. 241; Cross *v.* Levy, 57 Miss. 634.

[2] Caffrey *v.* Dudgeon, 38 Ind. 512, S. C. 10 Am. R. 126; Olds *v.* State, 6 Blackf. 91; Wilson *v.* Hamer, 1 M. & S. 120; Commonwealth *v.* Jackson, 1 Leigh. 485; Benedict *v.* Bray, 2 Cal. 251, S. C. 56 Am. Dec. 332; Sheeley *v.* Wiggs, 32 Mo. 398, 405; Garnet *v.* Rodgers, 52 Mo. 145; Hessey *v.* Heitkamp, 9 Mo. App. 36.

[3] Stevenson *v.* Miller, 2 Lit. (Ky.) 306, S. C. 13 Am. Dec. 271; Gudtner *v.* Kilpatrick, 14 Neb. 347; Robertson *v.* Smith, 129 Ind. 422; Memmler *v.* Roberts, 81 Ga. 659; Cunningham *v.* Jacobs, 120 Ind. 306; Fahnestock *v.* Gilham, 77 Ill. 637; Bates *v.* Williams, 43 Ill. 494; Hanna *v.* McKenzie, 5 B. Monr. 314, S. C. 43 Am. Dec. 122; Cumberland, etc., Co. *v.* Hoffman, etc., Co., 39 Barb. 16; Adams *v.* Olive, 57 Ala. 249; Walton *v.* Develing, 61 Ill. 201; People *v.* Falconer, 2 Sandf. 81; Harbaugh *v.* Albertson, 102 Ind. 69, S. C. 1 N. E. R. 298; Fenton *v.* Harred, 17 Pa. St. 158; Hoy *v.* Rogers, 4 Monr. 225; Elliott's Appellate Procedure, § 357.

litigation you have no right of action because the plaintiff instituted his action in the wrong court. If the defendant is free from wrong and the plaintiff does him a wrong resulting in loss or injury, the plainest principles of natural justice require that the plaintiff be estopped from asserting that the court of his own choice had no jurisdiction. The argument that as there was no jurisdiction all things are nullities is fallacious for it assumes the point in dispute, namely, that the plaintiff is concluded from denying what he has previously asserted.[1]

§ 268. **Transfer of jurisdiction.**—The policy of the law is to keep a case in one court and not distribute it piecemeal between different tribunals, so that the general rule is that when a case goes by due course of law from one tribunal to another it goes as an entirety. As we have said when a case goes by writ of error or appeal from an inferior to a superior tribunal the case in all its parts is transferred to the higher court.[2] But a mere attempt to appeal, or an appeal so entirely ineffective as not to get the case into the appellate tribunal can not operate to transfer jurisdiction.[3] Where a petition and bond are filed according to law for the removal of a case from a State to a Federal court, jurisdiction is transferred.[4] A case may be transferred from one court to another by law, and as there is no vested right in a tribunal the legislature may, in the absence of constitutional restrictions, provide by statute for such transfer

[1] There is, of course, no difficulty in applying the doctrine of estoppel where there is jurisdiction of the general subject, for where such jurisdiction exists an affirmance of the validity of the judgment, as by accepting benefits or the like, may preclude the party from assailing the judgment in any mode. Trickey *v.* Schladder, 52 Ill. 78; Freeman *v.* Weeks, 45 Mich. 335; Cornwall *v.* Davis, 38 Fed. R. 878; Murphy *v.* United States, 104 U. S. 464; Neal *v.* Field, 68 Ga. 534; Paine *v.* Woolley, 80 Ky. 568.

[2] *Ante*, §§ 235, 265; McKinney *v.* Jones, 57 Wis. 301; *Ex parte* Sibbald, 12 Pet. 488; McClannahan's Heirs *v.* Henderson, 1 T. B. Monr. 261; McArthur *v.* Dane, 61 Ala. 539; Boynton *v.* Foster, 7 Met. 415; Marysville *v.* Buchanan, 3 Cal. 212; McMillan *v.* Richards, 12 Cal. 467.

[3] State *v.* Kolsem, 130 Ind. 434; Brady *v.* Burke, 90 Cal. 1.

[4] Railroad Co. *v.* Koontz, 104 U. S. 5; Steamship *v.* Tugman, 106 U. S. 118.

as to pending cases.[1] There is much conflict of authority upon the question whether the filing of an affidavit for a change of venue of itself transfers jurisdiction; our opinion is that it does not. There is also conflict upon the question whether the filing of an affidavit so operates as to terminate the jurisdiction of the court in which it is filed, and this question must, as we believe, be answered in the negative.

[1] Branson *v.* Studebaker, 133 Ind. 147, S. C. 33 N. E. R. 98. The doctrine of the power of the legislature over remedies is discussed by Judge Cooley with vigor and ability, and one of his statements is, that, "It may abolish one class of courts and create another." Cooley's Const. Lim. (6th ed.) 442. It is true that, comprehensive as the power of the legislature is over remedies, it can not deny entirely a right to some remedy, but it may essentially change the remedy. Sturges *v.* Crowninshield, 4 Wheat. 122; Tennessee *v.* Sneed, 96 U. S. 69; Edwards *v.* Kearzey, 96 U. S. 595; Louisiana *v.* New Orleans, 102 U. S. 203; White *v.* Hart, 13 Wall. 646; Terry *v.* Anderson, 95 U. S. 628. In Brown *v.* Buck, 75 Mich. 438, S. C. 13 Am. St. R. 438, the court held a statute providing for a jury trial in suits in equity to be unconstitutional, but this seems to be out of line with the authorities.

CHAPTER VII.

CHOOSING THE FORUM, REMEDY AND MODE OF TRIAL.

§ 269. Election to try by court or jury.
270. Effect of mistake in choice of remedy.
271. Facts differently pleaded may bring different result.
272. Election to sue in tort or on implied contract.
273. Nature of relief may determine choice of remedy.
274. Election of remedy in case of fraudulent purchase.
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278. When to try by jury — Sympathy.
279. When to try by court.
280. Considerations which determine whether to try by court or jury.
281. Jury will generally award liberal damages.
282. Instructions where trial is by jury.
283. Judgment of jurors on facts often better than that of judge.
284. Delay and partiality of judge.

§ 269. **Election to try by court or jury.**—The advocate can not always choose the forum for the trial of his case, but he may often so construct his theory and frame his pleadings as to determine whether the case shall be tried by the court or by the jury. In most jurisdictions a suit in equity is heard by the court without a jury,[1] and almost all actions at law may be tried either by the court or by the jury, as the parties may elect. An advocate who determines that it is expedient to try by the court, and avoid a jury trial, will, whenever it is practicable, so frame his pleadings as to constitute his cause one of equity jurisdiction. It is, as all lawyers know, not possible to

[1] For examples of equity suits or defenses not triable by jury, see Lynch *v.* Met. Elev. R. Co., 129 N. Y. 274, S. C. 15 L. R. A. 287; Coleman *v.* Coleman (Ind.), 31 N. E. Rep. 75; Sheppard *v.* Steele, 43 N. Y. 52; Stono *v.* Weiller, 128 N. Y. 655, S. C. 28 N. E. Rep. 635; North Hudson B. & L. Ass'n *v.* Childs, 82 Wis. 460, S. C. 52 N. W. Rep. 600; Leeper *v.* Taylor, 111 Mo. 312, S. C. 19 S. W. Rep. 955; Weil *v.* Kume, 49 Mo. 158; Wynkoop *v.* Cooch, 89 Pa. St. 450; Lake *v.* Tolles, 8 Nev. 285; Stilwell *v.* Kellogg, 14 Wis. 461; Miller *v.* City of Indianapolis, 123 Ind. 196.

do this in every case; nor, indeed, in many cases; but it may be done in some. And the fact that equity may have jurisdiction does not prevent the maintenance of an action at law.[1] Thus, it often happens that a plaintiff may elect to bring an action for damages for a breach of contract, or he may institute a suit for specific performance.[2] Notwithstanding the changes made by the codes of civil procedure adopted in many of the States, there is in most of them still an election between remedies. An advocate may very often elect which remedy he will pursue, and when he does elect, he will, of course, make the theory and the pleadings conform to the rules which govern the class of cases in which he has elected to place the case intrusted to him.

§ 270. **Effect of mistake in choice of remedy.**—A mistake in the choice of remedies may, in some instances, bring certain defeat, and in all it is very apt to endanger success. The selection of a radically wrong remedy insures defeat, and even if a remedy is chosen that is not radically wrong it may, if the best is not chosen, seriously embarrass and impede the advocate in his work. The choice of remedies is not, therefore, governed solely by the consideration of whether it is a proper one, for the question whether it is the best one, must also be considered. The same facts may bring success under one form of procedure, or in one forum, and defeat in another. Thus, a suit for injunction will fail if brought to enjoin the defendant from committing a fugitive trespass, but an action at law will lie.[3] An action to recover damages for a breach of contract may lie where an action for a breach of warranty would fail. An action for damages for trespass to land brought in one

[1] Duffield *v.* Rosenzweig, 144 Pa. St. 520, S. C. 23 Atl. R. 4; Reynolds *v.* Hennessey, 17 R. I. 169, S. C. 23 Atl. R. 639. But, as a general rule, subject to many exceptions, when an adequate remedy at law exists, equity will refuse relief.

[2] Graves *v.* White, 87 N. Y. 463, 465; Smyth *v.* Sturges, 108 N. Y. 495; Snodgrass *v.* Snodgrass, 32 Ind. 406; Dotron *v.* Bailey, 76 Ind. 434.

[3] Bolster *v.* Catterlin, 10 Ind. 117; Minnig's Appeal, 82 Pa. St. 373; Frink *v.* Stewart, 94 N. Car. 484; Smith *v.* Gardner, 12 Ore. 221, S. C. 53 Am. R. 342, and note.

county may fail, but succeed if brought in another. An action may be maintained in one court, but, although the facts may be the same, not in another; for one court may have jurisdiction and the others not. There may sometimes be concurrent jurisdiction, and one judge may be preferable to another. So, too, it is sometimes possible to select the venue for trial by a judicious naming of parties, or a selection of the form of the remedy. There are many cases where much depends upon the form of the remedy, the court, and the place of trial, and these are matters not to be lightly disregarded.

§ 271. **Facts differently pleaded may bring different result.** —The same facts differently pleaded may lead to different results. Thus, a suit to foreclose may be maintained on a deed absolute on its face but executed to secure a debt, for it may be treated as a mortgage; but it would not support an action of ejectment nor a suit to quiet title. In a reported case the facts, shortly stated, were these: The defendants were the owners of a sow which went upon the plaintiff's land and injured his cow. The plaintiff, instead of laying as his cause of action, as he might have done, the trespass of the sow, and charging the injury to the cow in aggravation of damages, sued for the injury done by the sow and lost his case, because he did not prove that the defendants had knowledge of the vicious propensities of the sow.[1] In another case the defendant, an infant, hired a horse, and so ill-treated it that it died, and the plaintiff, instead of declaring on the tort, sued to recover damages for a breach of the implied contract to take reasonable care of the horse, and was defeated.[2]

§ 272. **Election to sue in tort or on implied contract.**— Even in those jurisdictions where the code practice prevails there may be an action on the tort or on the implied contract, at the election of the plaintiff.[3] It is sometimes difficult to de-

[1] Van Leuven *v.* Lyke, 1 N. Y. 515.

[2] Campbell *v.* Stakes, 2 Wend. 137. See, also, McLaughlin *v.* Dunn, 45 Mo. App. 645.

[3] Adams *v.* Sage, 28 N. Y. 103; Moller *v.* Tuska, 87 N. Y. 166; Wilmot *v.* Richardson, 2 Keyes (N.Y.), 519; Bixbie *v.* Wood, 24 N. Y. 607; Union

termine whether it is expedient to waive the tort and sue on the contract, or to ground the action on the tort, for the election may, in a great degree, control the method of trial, and materially affect the rights of the parties under the judgment recovered. A wrong decision of this question may lead to evil results, and once made the party can not retrace his steps, but must abide by his decision. It is clear that, in general, an action on the contract will be simpler and require less evidence, but the damages may not be so great nor the judgment so effective. It is sometimes easier to secure a verdict in an action for fraudulent representations than in an action on the implied contract, for evidence of fraud will sometimes strongly influence the jury against the defendant. A complaint charging fraud will, as is well known, often let in much evidence that would not be relevant in an action on the implied contract. On the other hand, it is sometimes more difficult to obtain a verdict where it can only be gained by attributing to the unsuccessful party a moral wrong than it is where he is simply charged with having failed to perform his contract. What course is expedient in such a case can only be determined from a careful survey and study of the facts, and a consideration of the character of the party against whom fraud is alleged. If a man's character is bad, jurors will not be slow to believe him guilty of fraud; if good, they will be extremely reluctant to impute dishonesty to him.

§ 273. **Nature of relief may determine choice of remedy.**— In other cases the nature of the relief will exert an important influence upon the choice of the form of the remedy. For example, personal property is sold upon the condition that it shall be paid for in cash, and possession is obtained without a performance of the condition. There is in such a case a choice of remedies, for the seller may either sue for the value of the property, or he may bring an action to recover possession of

Bank *v.* Mott, 27 N. Y. 633; Nowling *v.* McIntosh, 89 Ind. 593, 595; Patterson *v.* Prior, 18 Ind. 440; Tp. of Buckeye *v.* Clark, 90 Mich. 432, S. C. 51 N. W. Rep. 528; Pomeroy's Remedies, §§ 568, 569.

it.[1] If the sale is an advantageous one, and the purchaser solvent, it would probably be expedient to sue for the value of the property; but if he is insolvent, then the better course would be not to sue on the implied contract, but to recover the property. In the one instance it would be much easier to make out the case, but the judgment when obtained might be of no practical value. It is evident that the matter of the election of remedies is one requiring care and judgment; but it is further evident that, after all, the question runs back to the formation of the theory, for the theory necessarily determines the form of the action, and what is here said does little more than show the application of the rules heretofore stated to particular instances. It is not our purpose, nor is it within the scope of our work, to fully discuss the rules which govern the election of remedies, or the methods of procedure, for all that our purpose requires is a mere suggestion of the necessity of studying with care, and deciding with caution, upon the choice of remedies; but a few additional illustrations may be of service, and they are given in the following sections.

§ 274. **Election of remedy in case of fraudulent purchase.**— It has been held that an action to enforce a contract procured by fraud is not necessarily a bar to a subsequent action for the fraud where both actions proceed upon the theory of an affirmance of the contract,[2] but it is a bar to a subsequent action which attacks the contract and seeks to recover the property.[3] So, an action to enforce a contract, after discovery of the fraud, is an election which will defeat a subsequent action to rescind it on the ground of fraud.[4] And, on the other hand, an ac-

[1] Morris *v.* Rexford, 18 N. Y. 552; Moore *v.* Baker, 4 Ind. App. 115, S. C. 30 N. E. Rep. 629; Bensinger Self-Adding, etc., Co. *v.* Cain (Tex.), 18 S. W. Rep. 136.

[2] Union Cent. Life Ins. Co. *v.* Schidler. 130 Ind. 214, S. C. 15 L. R. A. 89; Bowen *v.* Mandeville, 95 N. Y. 237; Whittier *v.* Collins, 15 R. I. 90.

[3] Lehman *v.* Van Winkle, 92 Ala. 443, S. C. 8 S. Rep. 870; Seavey *v.* Potter, 121 Mass. 297; O'Donald *v.* Constant, 82 Ind. 212; Bank *v.* Beale, 34 N.Y. 473; Kennedy *v.* Thorp, 51 N. Y. 174.

[4] Acer *v.* Hotchkiss, 97 N. Y. 395; Bryan & B. Shoe Co. *v.* Block, 52 Ark. 458; Bulkley *v.* Morgan, 46 Conn. 393; Stevens *v.* Pierce, 151 Mass. 207. An attachment to enforce a contract is a

tion to recover the property upon the ground of fraud will defeat a subsequent action to enforce the contract.[1]

§ 275. **Election as against trustees.** — One who receives money to be paid by him to another, or to be applied by him to a particular purpose, is a trustee and may be sued either in equity for breach of the trust or at law for money had and received.[2] And an election may be made to follow misapplied funds or to hold the trustee.[3] So, one who is entitled to a deposit in a savings bank, which has been paid, without authority, to another, may sue the latter for money had and received or he may elect to sue the bank for the deposit, but his election of one of these remedies will prevent a subsequent resort to the other.[4]

§ 276. **General rule—Election bars inconsistent remedy.**— The importance of selecting the best remedy in the first instance is clearly seen when we consider the general rule deduced from the foregoing and other authorities. It is this: Where a party has the choice of inconsistent remedies the selection of one, with full knowledge of the facts, is a bar to the other.[5] But the rule is otherwise where the remedies are concurrent and not inconsistent. In such a case the pursuit of one is not necessarily a bar to the other.[6] And the mere fact that a party mistakes his remedy, believing he has two or

conclusive election to affirm it. Conrow *v.* Little, 115 N. Y. 387, S. C. 5 L. R. A. 693; Sickman *v.* Abernathy, 14 Col. 174.

[1] Moller *v.* Tuska, 87 N. Y. 166; Morris *v.* Rexford, 18 N. Y. 552.

[2] Taylor *v.* Benham, 5 How. (U. S.) 233.

[3] Hodges *v.* Bullock, 15 R. I. 592.

[4] Fowler *v.* Bowery Sav. Bank, 113 N. Y. 450, S. C. 4 L. R. A. 145, S. C. 10 Am. St. Rep. 479.

[5] Boots *v.* Ferguson, 46 Hun (N.Y.), 129; Fields *v.* Bland, 81 N. Y. 239; Bank *v.* Beale, 34 N. Y. 473; Nanson *v.* Jacob, 93 Mo. 331; Becker *v.* Walworth, 45 Ohio St. 169; Curtis *v.* Williamson, L. R., 10 Q. B. 57; Sears *v.* Carrier, 4 Allen (Mass.), 339; O'Bryan *v.* Glenn, 91 Tenn. 106, S. C. 30 Am. St. Rep. 862; Ewing *v.* Cook, 85 Tenn. 332, S. C. 4 Am. St. Rep. 765; Thompson *v.* Howard, 31 Mich. 309; Farwell *v.* Myers, 59 Mich. 179; Crompton *v.* Beach (Conn.), 18 L. R. A. 187.

[6] Shaw *v.* Beers, 25 Ala. 449; McBean *v.* Fox, 1 Ill. App. 177; Goldberg *v.* Dougherty, 7 Jones & S. (N. Y.) 189; Connihan *v.* Thompson, 111 Mass. 270.

more remedies when he has not, and pursues the wrong one, will not of itself prevent him from subsequently obtaining redress by the proper remedy.[1]

§ 277. **Right to jury trial.**—Where the action is at law, then, as a general rule, either party may of right demand a jury.[2] Of the existence of this right there is seldom doubt, but as to when it is expedient to exercise it there is much doubt. It is not easy for the advocate, with the case fully before him, to decide whether a jury shall come or not, and it is more difficult to give advice upon the abstract question. Some general rules, proved by the experience of great advocates, may, however, be given, and from these the thinker will deduce the conclusion as to what it is expedient to do in his own particular case.

§ 278. **When to try by jury—Sympathy.**—Where the case is one not strong in its facts, but appealing to the sympathies of men, then let a jury come.[3] Judges are much less apt to yield to sympathy, for, although they may be moved, yet duty holds sympathy in check. Jurors, not bound by a stern sense of duty, yield, where there is a fair appearance of excuse, to their emotions. They will, indeed, search for an excuse, and it will go hard with them if they do not find one. As jurors are liable to err on the one side, judges are liable to err on the other side, through fear of sacrificing duty to sympathy. It is unnecessary to specify the cases which fall under this rule, for they will readily occur to every one who gives the subject any thought.

§ 279. **When to try by court.**—If the case is really a strong one, although somewhat obscured, it should be tried by the court by all means,[4] unless some countervailing facts make a

[1] Bunch *v.* Grave, 111 Ind. 351; Butler *v.* Hildreth, 5 Mete. (Mass.) 49, 52; Peters *v.* Ballistier, 3 Pick. (Mass.) 495.

[2] Flint River Steamboat Co. *v.* Roberts, 2 Fla. 102, S. C. 48 Am. Dec. 178, and note; Eshelman *v.* Chicago, B. & Q. R. R. Co., 67 Ia. 296, S. C. 25 N.W. Rep. 251; Taylor *v.* Ford, 92 Cal. 419, S. C. 28 Pac. Rep. 441.

[3] 31 Alb. L. J. 504.

[4] "If," says a writer in the American Law Record, "the lawyer thinks the cause good in law and justice, he will prefer to have it tried by the judge."

different course expedient. A judge will brush aside obscurities that would perplex jurors, and he will trim down all immaterial matters and go at once to the strong points. Where the case relates to matters generally known to jurors because of their business or associations in life, then a jury trial is expedient, unless the knowledge or the prejudices of the jurors will probably be adverse to the client the advocate represents. In many matters the knowledge of jurors is better and more practical than that of the judge, and that knowledge should be made available whenever possible. Jurors are less restricted by rules than judges are, and will often render a verdict in accordance with what they esteem justice, while the judge, bound by duty, would deal out the stern law. Jurors love what they call justice, and although it is often "a wild kind of justice," still it is a kind that may be frequently pressed into service.

§ 280. **Considerations which determine whether to try by court or jury.**—If a really strong advocate is on the other side, or one who has great influence with the jury, whether that influence be attributable to ability, or to some other cause, a jury trial should, if possible, be avoided. If the case is one where the technical rules are one way, and operate with seeming harshness, then, as any one will see, a jury is wanted by the one side but not by the other. A party who has a bad witness on his side that he must call is safer in the hands of the court than in the hands of the jury, for the trained mind of the judge will enable him to see that a bad witness does not taint the others, whereas a jury is almost sure to judge the other witnesses by the company they are found in.

§ 281. **Jury will generally award liberal damages.**—Where liberal damages are wanted and expected a jury is needed. Judges are likely to award damages as compensation, or in the nature of compensation, whereas juries are almost sure to give liberal compensation, and to add something for sympathy, and still more by way of punishment. There are many cases where there is no definite rule for measuring damages, and in such

cases, if sympathy is aroused, jurors will deal out compensation unsparingly, and will not stop with that. Especially will they liberally award damages where one side is powerful and the other weak. A weak woman is almost sure to be dealt with very liberally if a man be the adverse party. Every one, lawyer or layman, knows how great corporations fare.

§ 282. **Instructions where trial is by jury.**—Where the policy of the party is to compel the judge to fully state the law, it is well to take a jury and ask the judge to instruct in writing. This course is expedient where there has been an adverse ruling on the pleadings, and an appeal is in view. But, while it is always advisable to save questions, the true course is to fight to win in the trial court. That should be the chief purpose, although it is prudent to prepare for an appeal by saving questions. This purpose, however, should, we may say at the expense of a slight digression, be veiled and not revealed to the jury.

§ 283. **Judgment of jurors on facts often better than that of judge.**—Jurors come to the consideration of a case with fresh and unoccupied minds, and the case placed before them is heard with eager interest; whereas, the judge almost always has many other cases in his mind, and the new case can not receive his undivided attention. Nor is he called to do work novel or strange; but, on the contrary, the work is commonplace and familiar, unless, indeed, the case is a peculiar and striking one. For these reasons the judgment of twelve jurors on a question of fact is often really better than that of the judge.[1] This, however, is true only where the jurors are men of average

[1] "As for responsibility, a judge, being a permanent officer, especially a judge sitting alone, is more responsible to public opinion than any individual juryman, who is one of a body assembled only once and immediately dissolved. But I believe that the feeling of moral responsibility is much stronger in the case of the juryman, to whom the situation is new, whose attention is excited, who for the first time in his life is called upon to exercise public functions in the face of all his neighbors, than in that of a judge who is, perhaps, doing to-day what he has been doing every day for ten years before."—*Sir W. Erle.*

intelligence, who have not tried many cases, for of all bad triers professional jurors are the worst. The things we have suggested merit consideration by one who is deliberating upon the question whether he will try his case by the court or by the jury.

§ 284. **Delay and partiality of judge.**—Another matter that deserves attention is this: A prompt decision is generally obtained from a jury, while many judges delay their decisions. Two evils result from these delays; one is that the case is often postponed until the facts are forgotten or indistinctly remembered, and the case is decided on blurred and indistinct impressions; the other is that long delay makes it very difficult to secure a full and accurate bill of exceptions. Another reason for trying by the jury is that there are, it must with reluctance be owned, some trial judges who so strongly adhere to what they have decided that they will do injustice by denying a fair bill of exceptions in order to prevent their decisions from being overthrown on appeal. There are, happily, very few such judges, but the advocate who is so unfortunate as to be compelled to practice before such a judge will do well to trust the jury. It is said by an eminent man,[1] and, indeed, it is said by more than one man, that some judges are influenced by particular advocates. Where this is true, of course the advocate who opposes one who controls the judge will try by the jury and not by the court.

[1] Sir W. Erle.

CHAPTER VIII.

TIME OF BRINGING THE ACTION.

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§ 285. **Effect of lapse of time to be considered before bringing action.**—Before an action of any kind should be brought, and in order to determine what remedy and forum should be chosen, where the right of election exists, the effect of lapse of time since the cause of action arose must be considered. It may be that the statute of limitations has barred all remedies, or it may be that, although one particular remedy is barred by the statute, another is not. So, it may be that there has been such *laches* on the part of the plaintiff as to prevent him from obtaining relief in a court of equity; and there may be presumptions, arising from lapse of time, of such a nature as to defeat an action. All these matters should be carefully considered before the action is brought.

§ 286. **When cause of action accrues—General rules.**—In order to determine the effect of lapse of time it is first necessary to know when the right of action accrued. Ordinarily, in cases of contract the time when the cause of action accrues may be determined from the terms of the contract, and in cases

of tort it may be fixed by the time of the commission of the wrongful act; but there are many cases in which the question is one that it is very difficult to determine. It may be said, generally, however, that where a right or claim depends upon some condition or contingency, the statute does not begin to run until the happening of the contingency or fulfillment of the condition.[1] So, where a demand is necessary to perfect the cause of action, the general rule is that the statute does not begin to run until the demand is made.[2] And a cause of ac-

[1] Judge *v.* Everts, 64 Wis. 372; Damron *v.* Penn. Co., 99 Ind. 478; Miller *v.* Miller, 7 Pick. (Mass.) 133; Hall *v.* Felton, 105 Mass. 516; Arnold *v.* United States, 9 Cranch, 104; Fenton *v.* Emblers, 3 Burr. 1278; Rhodes *v.* Smethurst, 4 M. & W. 42; Goodnow *v.* Stryker, 62 Ia. 221; Bowles *v.* Elmore, 7 Gratt. (Va.) 385; Atkinson *v.* Bradford, etc., Soc., L. R., 25 Q. B. Div. 377; Savage *v.* Aldren, 2 Stark. 206.

[2] Bank of B. N. A. *v.* Merchants' Nat. Bank, 91 N. Y. 106; Bruce *v.* Tilson, 25 N. Y. 194; Dorland *v.* Dorland, 66 Cal. 189; Brewster *v.* Hobart, 15 Pick. (Mass.) 302; Girard Bank *v.* Bank of Penn Tp., 39 Pa. St. 92; Finkbone's Appeal, 86 Pa. St. 368; McGough *v.* Jamison, 107 Pa. St. 336; Hawkins *v.* Glenn, 131 U. S. 319, 334; Gutch *v.* Fosdick, 48 N. J. Eq. 353, S. C. 22 Atl. Rep. 590; Cole *v.* Wright, 70 Ind. 179; Atherton *v.* Williams, 19 Ind. 105; Lynch *v.* Jennings, 43 Ind. 276; Emerick *v.* Chesrown, 90 Ind. 47. If made prior to the time when it should be made, so that the party upon whom it is made is under no obligation to comply therewith, it will not set the statute in motion. Langsdale *v.* Woollen, 99 Ind. 575. But a note payable on demand is due immediately and the statute runs from its date. McMullen *v.* Rafferty, 89 N. Y. 456, 459; Wenman *v.* Mohawk Ins. Co., 13 Wend. 267, S. C. 28 Am. Dec. 464, and note; Kimball *v.* Kimball, 16 Mich. 211; Kraft *v.* Thomas, 123 Ind. 513; Mills *v.* Davis, 113 N. Y. 243, S. C. 3 L. R. A. 394; Norton *v.* Ellam, 2 M. & W. 461. Failure to make a demand within a reasonable time may set the statute to running, and, according to some authorities, if not made within the statutory period, will defeat the action. Codman *v.* Rogers, 10 Pick. (Mass.) 112; Palmer *v.* Palmer, 36 Mich. 487, S. C. 24 Am. Rep. 605; Jameson *v.* Jameson, 72 Mo. 640; Reizenstein *v.* Marquardt, 75 Ia. 294, S. C. 9 Am. St. Rep. 477; High *v.* Board, 92 Ind. 580; Newsom *v.* Board, 103 Ind. 526; Kraft *v.* Thomas, 123 Ind. 513. Compare Keithler *v.* Foster, 22 Ohio St. 27; Thrall *v.* Mead, 40 Vt. 540; Daugherty *v.* Wheeler, 125 Ind. 421, 426; Smith *v.* Smith, 91 Mich. 7, S. C. 51 N. W. Rep. 694, which show that it is unreasonable in some cases to hold the action completely barred at the end of the statutory period by mere failure to make a demand. The following rules have been laid down by the Supreme Court of Indiana for determining when a demand is necessary: "1. When the time and place of payment are fixed in the contract no demand is necessary before suit. 2. When the time of payment is fixed and the place is left undetermined by the contract no demand is necessary.

tion does not accrue in favor of a remainderman until the termination of the prior estate.[1] Under the rule that the statute of limitations begins to run from the time the cause of action accrued, the phrase "cause of action" implies not only right of action but also power of action.[2] In other words, there must be some one who can sue and some one who can be sued.[3]

§ 287. **Accounts.**—The statute begins to run in case of an open, mutual and current account from the date of the last item.[4] Where the account is for work and labor performed under an entire contract and no time is specified as to when it shall be completed or payment made, the statute does not begin to run until the work is completed.[5] So, it has been held that the statute will not begin to run on an open and unsettled account between an attorney and client until the termination of

3. If the contract be to pay on demand, a special demand before suit is necessary, though on a contract to pay money such demand is not necessary. 4. When the place of payment is fixed by the contract, but the time is left undetermined, a demand before suit is necessary. 5. When both the time and place of payment are left undetermined by the contract a demand before suit is necessary." Frazee *v.* McChord, 1 Ind. 224.

[1] Fleming *v.* Burnham, 100 N. Y. 1; Luntz *v.* Greve, 102 Ind. 173; Kellar *v.* Stanley, 86 Ky. 240; Dugan *v.* Follett, 100 Ill. 581; Lindley *v.* Groff, 37 Minn. 338; Bradley *v.* Mo. Pac. R. R. Co., 91 Mo. 493; Pinckney *v.* Burrage, 31 N. J. L. 21; Burns *v.* Headerick, 85 Tenn. 102; Orthwein *v.* Thomas, 127 Ill. 554, S. C. 11 Am. St. Rep. 159, and note; Allen *v.* De Groodt, 98 Mo. 159, S. C. 14 Am. St. Rep. 626, and note.

[2] Baker *v.* Barclift, 76 Ala. 414; Swann *v.* Lindsey, 70 Ala. 507; Sorrels *v.* Trantham, 48 Ark. 386.

[3] Sorrels *v.* Trantham, 48 Ark. 386; Murray *v.* The East India Co., 5 B. & Ald. 204; Reilly *v.* Chouquette, 18 Mo. 220; Brenner *v.* Quick, 88 Ind. 546, 555; Hobart *v.* Conn. Turnp. Co., 15 Conn. 145; Granger's Administrator *v.* Granger, 6 Ohio, 35.

[4] Frankoviz *v.* Smith, 34 Minn. 403; Skyrme *v.* Occidental, etc., Co., 8 Nev. 219; Schmeiding *v.* Ewing, 57 Mo. 78; O'Leary *v.* Burns, 53 Miss. 171; Coster *v.* Murray, 5 Johns. Ch. (N.Y.) 522; Cogswell *v.* Dolliver, 2 Mass. 217; Bass *v.* Bass, 6 Pick. 362; Sanders *v.* Sanders, 48 Ind. 84; Harper *v.* Harper, 57 Ind. 547; Van Swearingen *v.* Harris, 1 Watts & S. (Pa.) 356. As to what are mutual accounts within this rule, see Norton *v.* Larco, 30 Cal. 127, S. C. 89 Am. Dec. 70, and note. The theory is "that the credits are mutual and that the account is permitted to run with the view of ultimate adjustment by a settlement and payment of the balance." Per Earl, J., in Green *v.* Disbrow, 79 N. Y. 1, 9.

[5] Knight *v.* Knight (Ind. App. Ct.), 30 N. E. Rep. 421; McKinney *v.* Springer, 3 Ind. 59; Wright *v.* Miller, 63 Ind. 220.

their relation as such.[1] But, where an account is "one-sided," and not an open mutual account, the statute runs against each item from its date.[2] And in case of a stated account, the statute runs against the balance from the time it is stated.[3]

§ 288. **Agents and fiduciaries.**—The statute of limitations runs as to causes of action against agents and fiduciaries generally from the time of making demand upon the one hand [4] or conversion or disavowal of the agency or liability upon the other.[5] This is not, however, an invariable rule.[6] Where an agent is wrongfully discharged his cause of action for the breach of contract accrues immediately,[7] and this is true, even though the time for the agent to enter upon the performance of his duties has not arrived, if the principal repudiates the contract and informs the agent that it is no longer binding.[8] Executors are technically trustees of the personal property of their decedent, and can not, therefore, as against the benefici-

[1] McCain *v.* Peart, 145 Pa. St. 516; Johnston *v.* McCain, 145 Pa. St. 531, S. C. 22 Atl. Rep. 979; Walker *v.* Goodrich, 16 Ill. 341; Noble *v.* Bellows, 53 Vt. 527; Bathgate *v.* Haskin, 59 N. Y. 533; Eliot *v.* Lawton, 7 Allen (Mass.), 274.

[2] Todd *v.* Todd, 15 Ala. 743; Buntin *v.* Lagow, 1 Blackf. 373; Reeves *v.* Herr, 59 Ill. 81; Harrison *v.* Hall, 8 Mo. App. 167; Bennett *v.* Davis, 1 N. H. 19; Kimball *v.* Brown, 7 Wend. 322; Fitzpatrick *v.* Phelan's Estate, 58 Wis. 250; Perrill *v.* Nichols, 89 Ind. 444.

[3] Union Bank *v.* Knapp, 3 Pick. (Mass.) 96, S. C. 15 Am. Dec. 181; Schall *v.* Eisner, 59 Ga. 190; Wood on Limitations, § 280. So, where the question of the balance is submitted to a referee, the statute runs from the referee's finding. Moore *v.* Greene Co. Comrs., 87 N. Car. 209.

[4] Judah *v.* Dyott, 3 Blackf. 324, S. C. 25 Am. Dec. 112; Jones *v.* Gregg, 71 Ind. 84; Dodds *v.* Vannoy, 61 Ind. 89; Langsdale *v.* Woollen, 99 Ind. 575; Rathbun *v.* Ingals, 7 Wend. 320; Taylor *v.* Bates, 5 Cow. 376; Krause *v.* Dorrance, 10 Pa. St. 462, S. C. 51 Am. Dec. 496; Whitehead *v.* Wells, 29 Ark. 99; Mandeville *v.* Welch, 5 Wheat. (U. S.) 277.

[5] Spencer *v.* Morgan, 5 Ind. 146; Ferguson *v.* Dunn, 28 Ind. 58; Love *v.* Hoss, 62 Ind. 255; Ward *v.* Harvey, 111 Ind. 471; Cunningham *v.* McKindley, 22 Ind. 149; Gisborn *v.* Charter Oak Life Ins. Co., 142 U. S. 326.

[6] See Mechem on Agency, § 533; Clark *v.* Moody, 17 Mass. 145; Jett *v.* Hempstead, 25 Ark. 462.

[7] Mechem on Agency, § 624.

[8] Howard *v.* Daly, 61 N. Y. 362, S. C. 19 Am. Rep. 285; Dugan *v.* Anderson, 36 Md. 567, S. C. 11 Am. Rep. 509; Danube & Black Sea R'y Co. *v.* Xenos, 13 Com. B. (N. S.) 825.

aries, set up the statute of limitations in bar of the latter's claims, so long as such relation exists.[1] So, a guardian stands in the relation of trustee to the ward and the statute does not begin to run as to guardianship accounts until that relation is terminated.[2]

§ 289. **Contracts generally.**—A cause of action for breach of a contract accrues at the time the contract is broken.[3] When no time is fixed for the termination of services or the payment for such services, but the work is all done under one contract, the statute of limitations will not begin to run until the work is ended;[4] but where personal property is sold and nothing is said as to the time and manner of payment, the law implies a cash payment at the time of delivery, and the statute commences to run at that time.[5] A contract partly in writing and partly in parol is regarded as a parol contract, and the action must be brought within the time limited for bringing actions upon parol contracts.[6] On contracts of indemnity the general rule is that the statute begins to run from the time the obligee or promisee actually pays the money or damages, and not from the date of the contract.[7] But much will depend upon the terms of the obligation.[8] A cause of action upon an implied

[1] Norris' Appeal, 71 Pa. St. 106; Ward *v.* Reeder, 2 H. & M.(Md.) 145; Arden *v.* Arden, 1 Johns. Ch. (N. Y.) 314.

[2] Taylor *v.* Kilgore, 33 Ala. 214; Alston *v.* Alston, 34 Ala. 15; Kimball *v.* Ives, 17 Vt. 430; Mathes *v.* Bennett, 21 N. H. 204; Nunnery *v.* Day, 64 Miss. 457.

[3] Arnold *v.* Blabon, 147 Pa. St. 372, S. C. 23 Atl. R. 575; Middletown *v.* Newport Hospital, 16 R. I. 319, S. C. 1 L. R. A. 191.

[4] Graves *v.* Pemberton, 3 Ind. App. Ct. 71, S. C. 29 N. E. R. 177; O'Brien *v.* Sexton, 140 Ill. 517, S. C. 30 N. E. R. 461; Jones *v.* Lewis, 11 Tex. 359. See, also, Wilkinson *v.* Johnston, 83 Texas, 392, 18 S. W. R. 745; Schock *v.* Garrett, 69 Pa. St. 144; Hall *v.* Wood, 9 Gray (Mass.), 60. Compare Davis *v.* Gorton, 16 N. Y. 255.

[5] Rous *v.* Walden, 82 Ind. 238; Benjamin on Sales, §§ 617, 706.

[6] Hackleman *v.* Board, 94 Ind. 36; Board *v.* Shipley, 77 Ind. 553.

[7] Colvin *v.* Buckle, 8 M. & W. 680; Collinge *v.* Haywood, 1 P. & D. 502; Jones *v.* Trimble, 3 Rawle (Pa.), 381; Platt *v.* Smith, 14 Johns. (N. Y.) 368; Rodman *v.* Hedden, 10 Wend. (N.Y.) 498; Hall *v.* Thayer, 12 Mete. (Mass.) 130.

[8] See Kirby *v.* Studebaker, 15 Ind.45; Anderson *v.* Washabaugh, 43 Pa. St. 115; Roberts *v.* Riddle, 79 Pa. St. 468; Vanderkemp *v.* Shelton, 11 Paige (N. Y.), 28; Thomas *v.* Croft, 2 Rich. (So. Car.) 113; Bank of South Carolina *v.* Knotts, 10 Rich. (So. Car.) 543.

contract for money had and received, as where there is an overpayment by mistake, generally accrues immediately upon the payment and receipt of the money.[1] But where money is paid upon a contract incapable of enforcement under the statute of frauds because not in writing, the statute of limitations does not begin to run, as against an action to recover it, until the other party refuses to perform his part of the contract, or does some act clearly evincing an intention to rescind it.[2]

§ 290. **Contribution.**—As a general rule, the right of a surety to contribution from a co-surety accrues when the amount necessary to discharge the joint liability is paid and not at the time the obligation was entered into or the principal became liable;[3] but it has been held that where the surety makes partial payments upon the debt secured, the statute begins to run on each payment after he has paid more than his proportion of the debt from the time such payment is made.[4] Where a partner has paid a debt of the firm out of his individual means, the statute does not begin to run against his claim for contribution until a settlement between the partners.[5]

§ 291. **Conversion.**—In an action for the conversion of property the statute begins to run at the time of the conver-

[1] Bank *v.* Daniel, 12 Pet. (U. S.) 32; Leather Man'f'rs Bank *v.* Merchants' Bank, 128 U. S. 26, S. C. 9 Sup. Ct. R. 3; Schultz *v.* Board, 95 Ind. 323; Ware *v.* State, 74 Ind. 181; Shelburn *v.* Robinson, 8 Ill. 597; Sturgis *v.* Preston, 134 Mass. 372; Campbell *v.* Roe, 32 Neb. 345, S. C. 49 N. W. R. 452; Clarke *v.* Dutcher, 9 Cow. (N. Y.) 674; St. John *v.* Coates, 63 Hun (N. Y.), 460. Compare Merchants' Bank *v.* First Nat. Bank, 4 Hughes (U. S.), 1; Sharkey *v.* Mansfield, 90 N. Y. 227; Glasscock *v.* Rosengrant, 55 Ark. 376, S. C. 18 S. W. R. 379; Johnson *v.* Rutherford, 10 Pa. St. 455.

[2] Collins *v.* Thayer, 74 Ill. 138; Cairo, etc., R. R. Co. *v.* Parks, 32 Ark. 131.

[3] Werborn *v.* Kahn, 93 Ala. 201, S. C. 9 So. Rep. 729; Scott *v.* Nichols, 27 Miss. 94, S. C. 61 Am. Dec. 503, and note; Camp *v.* Bostwick, 20 Ohio St. 337; Preslar *v.* Stallworth, 37 Ala. 402; Conn *v.* Coburn, 7 N. H. 368, S. C. 26 Am. Dec. 746; May *v.* Vann, 15 Fla. 553; Norton *v.* Hall, 41 Vt. 471; Bennett *v.* Cobb, 45 N. Y. 268; Singleton *v.* Townsend, 45 Mo. 379; Crosby *v.* Wyatt, 23 Me. 156.

[4] Bushnell *v.* Bushnell, 77 Wis. 435, S. C. 9 L. R. A. 411. See, also, Bullock *v.* Campbell, 9 Gill, 182; Butler *v.* Wright, 20 Johns. (N. Y.) 367; Davies *v.* Humphreys, 6 M. & W. 153.

[5] McDonald *v.* Holmes, 22 Ore. 212, S. C. 29 Pac. Rep. 735.

sion. It is sometimes difficult, however, to determine just when the conversion took place. Where the original taking is wrongful the cause of action accrues at once and the statute begins to run immediately;[1] but when the possession of the defendant is rightful the statute does not begin to run until demand and refusal or some other act sufficient to constitute a conversion.[2] Thus, where wine was not of the quality ordered and the buyer refused to accept it but took it from the carrier and stored it in his cellar, subject to the order of the vendor, and, some time after the death of the buyer, his successor in business sold the wine, thus converting it to his own use, it was held that the statute did not begin to run until the time of the conversion by the sale.[3] So, where the owner of bowlders had deposited them upon his own lot, and, by reason of a change of grade by the city they were covered up, it was held, in an action for conversion after he had sought to remove them and had been forbidden to do so by the city officials, that his cause of action accrued when he was forbidden to remove them and the statute did not begin to run until that time.[4] But actual demand or refusal is not always necessary even when the original taking was rightful. An unlawful sale or disposition of property rightfully in possession may of itself constitute a conversion, and when such is the case the statute will run from the time of the unlawful act.[5]

[1] Harpending *v.* Meyer, 55 Cal. 555; Read *v.* Markle, 3 Johns. (N. Y.) 523; Waller *v.* Bowling, 108 N. Car. 289, S. C. 12 L. R. A. 261; Brashier *v.* Tolleth, 31 Neb. 622, S. C. 48 N. W. Rep. 398; Rosum *v.* Hodges (S. Dak.), 9 L. R. A. 817; Velsian *v.* Lewis, 15 Ore. 539; Armacost *v.* Lindley, 116 Ind. 295; Baker *v.* Lothrop, 155 Mass. 376, S. C. 29 N. E. Rep. 643; Clink *v.* Gunn, 90 Mich. 135, S. C. 51 N. W. Rep. 193.

[2] Giles *v.* Merritt, 59 N. H. 325; Wilton *v.* Girdlestone, 5 B. & A. 847; Spackman *v.* Foster, 31 W. R. 548; Waldron *v.* Alexander, 35 Ill. App. 319; Torian *v.* McClure, 83 Ind. 310; Slaymaker *v.* Wilson, 1 R., P. & W. (Pa.) 216.

[3] Bishplinghoff *v.* Bauer, 52 Ind. 519.

[4] City of Elgin *v.* Goff, 38 Ill. App. 362.

[5] Dench *v.* Walker, 14 Mass. 500; Melville *v.* Brown, 15 Mass. 82; Coffey *v.* Wilkerson, 1 Mete. (Ky.) 101. See, also, Branch *v.* Planters' L. & S. Bank, 75 Ga. 342; Gordon *v.* Stockdale, 89 Ind. 240; Hollins *v.* Fowler, L. R., 7 H. L. 757; Jeffersonville R. R. *v.* White, 6 Bush (Ky.), 251; Lane *v.* Cameron, 38 Wis. 603; Ray *v.* Tubbs, 50 Vt. 688; Freeman *v.* Boland, 14 R. I. 39.

§ 292. **Corporations.**—The statute of limitations generally applies to private corporations the same as to natural persons. It also applies to municipal corporations in what may be termed their private capacity;[1] but it does not apply to such corporations, according to the weight of authority and reason, in their sovereign or public capacity.[2] Thus it has been held that an individual can not acquire title to a city street by mere adverse possession,[3] and where there is no special statute limiting the time for enforcing an assessment the general statute does not apply.[4] But a municipality is entitled to the benefit of the statute the same as an individual.[5]

§ 293. **Fraud—Concealment.**—The general rule in equity is that in case of fraud the statute of limitations does not begin to run until it is discovered or might have been discovered by the exercise of reasonable diligence.[6] There are statutory pro-

[1] Burlington *v.* R. R. Co., 41 Ia. 134; Koshkonong *v.* Burton, 104 U. S. 668; Mowry *v.* Providence, 10 R. I. 52; May *v.* School Dist., 22 Neb. 205, S. C. 3 Am. St. R. 266; Gaines *v.* Hot Springs Co., 39 Ark. 262; Western Lunatic Asylum *v.* Miller, 29 W. Va. 326, S. C. 6 Am. St. R. 644; Forsyth *v.* Wheeling, 19 W. Va. 318; Cincinnati *v.* Evans, 5 Ohio St. 594; Cooper *v.* Detroit, 42 Mich. 584.

[2] Sims *v.* City of Frankfort, 79 Ind. 446; City of Visalia *v.* Jacob, 65 Cal. 434, S. C. 6 Am. & Eng. Corp. Cas. 115; Reed *v.* Mayor, 92 Ala. 339, S. C. 33 Am. & Eng. Corp. Cas. 469; Vicksburg *v.* Marshall, 59 Miss. 563; Driggs *v.* Phillips, 103 N. Y. 77; Coleman *v.* Thurmond, 56 Texas, 514; Jersey City *v.* State, 30 N. J. L. 521; Philadelphia *v.* Phila., etc., R. R. Co., 58 Pa. St. 253; Simplot *v.* Chicago, etc., R. R. Co., 16 Fed. R. 350; Sims *v.* Chattanooga, 2 Lea (Tenn.), 694. *Contra*, City of Wheeling *v.* Campbell, 12 W. Va. 36; City of Ft. Smith *v.* McKibbin, 41 Ark. 45; Beardslee *v.* French, 7 Conn. 125; Cincinnati *v.* Evans, 5 Ohio St. 594; Pella *v.* Scholte, 24 Ia. 283; Dudley *v.* Frankfort, 12 B. Mon. (Ky.) 610; City of Richmond *v.* Poe, 24 Gratt. (Va.) 149; City of Galveston *v.* Menard, 23 Texas, 349.

[3] Moose *v.* Carson, 104 N. Car. 431, S. C. 17 Am. St. R. 681; Hoadley *v.* San Francisco, 50 Cal. 265; Sims *v.* City of Frankfort, 79 Ind. 446; Cheek *v.* City, 92 Ind. 107; Com. *v.* Moorehead, 118 Pa. St. 344, S. C. 4 Am. St. R. 599; Elliott on Roads and Streets, 666, 669.

[4] Dist. of Columbia *v.* Washington & G. R. R. Co., 1 Mackey, 361; Magee *v.* Com., 46 Pa. St. 358; Eschbach *v.* Pitts, 6 Md. 71; Pease *v.* Howard, 14 Johns. (N. Y.) 479; State Bank *v.* Brown, 1 Scam. (Ill.) 106.

[5] Lancaster County *v.* Brenthall, 29 Pa. St. 38; Gaines *v.* Hot Springs Co., 39 Ark. 262; Arapahoe Village *v.* Albee, 24 Neb. 242, S. C. 8 Am. St. R. 202; Clark *v.* Iowa City, 20 Wall. 583.

[6] "In suits in equity," says Mr. Justice Miller, in Bailey *v.* Glover, 21

visions to the same effect in many of the States, making the rule at law the same as in equity,[1] although in some of the States the cause of action must be *concealed* in order to postpone the running of the statute until discovery.[2] In the absence of any statute changing the rule, a majority of the courts have applied the rule in equity to actions at law, at least where there has been a fraudulent concealment of the cause of action by the defendant.[3]

Wall.(U. S.) 342, 347, "where relief is sought on the ground of fraud, the authorities are without conflict in support of the doctrine that where the ignorance of the fraud has been produced by affirmative acts of the guilty party in concealing the facts from the other, the statute will not bar relief, provided suit is brought within proper time after the discovery of the fraud. We also think that in suits in equity the decided weight of authority is in favor of the proposition that where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party." To the same effect are Booth *v.* Lord Warrington, 1 Brown's Parl. Cas. 445; Hovenden *v.* Lord Aimesley, 2 Sch. & Lef. 629; Stearns *v.* Page, 7 How. (U. S.) 819; Snodgrass *v.* Bank of Decatur, 25 Ala. 161, S. C. 60 Am. Dec. 505; Quimby *v.* Blackey, 63 N. H. 77; 2 Pom. Eq., § 917, note 3; Gillett *v.* Wiley, 126 Ill. 310, S. C. 9 Am. St. R. 587; Peck *v.* Bank, 16 R. I. 710, S. C. 19 Atl. R. 369.

[1] See Manufacturers' Bank *v.* Perry, 144 Mass. 313; 13 Am. & Eng. Ency. of Law, 728, note 2.

Churchman *v.* City of Indianapolis, 110 Ind. 259; Jackson *v.* Buchanan, 59 Ind. 390; Ware *v.* State, 74 Ind. 181; Wynne *v.* Cornelison, 52 Ind. 312. As to what is sufficient evidence of concealment under such a statute, see Smith *v.* Blair, 133 Ind. 367, S. C. 32 N. E. R. 1123; State *v.* Furlong, 60 Miss. 839. See, also, Boomer *v.* French, 40 Iowa, 601; Hudson *v.* Wheeler, 34 Texas, 356; Purdon *v.* Seligman, 78 Mich. 132, S. C. 43 N. W. R. 1045; Atlantic Bank *v.* Harris, 118 Mass. 147; Nudd *v.* Hamblin, 8 Allen (Mass.), 130. The last two cases from the same court are especially valuable upon this point, for in the former it was held that there was a fraudulent concealment, and in the latter that there was not, the facts, of course, being different.

[3] First Mass. Turnp. Co. *v.* Field, 3 Mass. 201, S. C. 3 Am. Dec. 124; Welles *v.* Fish, 3 Pick. (Mass.) 74; Farnam *v.* Brooks, 9 Pick. (Mass.) 212; Duffitt *v.* Tuhan, 28 Kan. 292; Yniestra *v.* Tarleton, 67 Ala. 126; Cole *v.* McGlathry, 9 Me. 131; Douglas *v.* Elkins, 28 N. H. 26; Harrisburg *v.* Forster, 8 Watts (Pa.), 12; Morgan *v.* Tener, 83 Pa. St. 305; Jones *v.* Conoway, 4 Yeates (Pa.), 109; Campbell *v.* Vining, 23 Ill. 525; Raymond *v.* Simonson, 4 Blackf. 85; Andrews *v.* Smithwick, 34 Texas, 544; McAlpine *v.* Hedges, 21 Fed. R. 689; Traer *v.* Clews, 115 U. S. 528, S. C. 6 Sup. Ct. Rep. 155; Snodgrass *v.* Branch Bank, 25 Ala. 161, S. C. 60 Am. Dec. 505, and note. *Contra*, Troup *v.* Smith,

§ 294. **Judgments.**—In the case of a judgment the statute of limitations ordinarily begins to run at the time the judgment is rendered,[1] and it has been held that where there is a *nunc pro tunc* entry the statute runs from the date of the actual rendition of the judgment and not from the date *as of which* it is rendered.[2] Under some statutes a judgment is considered as rendered only when it is entered of record.[3]

§ 295. **Negligence.**—In cases of negligence where the cause of action is the breach of duty and resulting damage or injury, and not the mere breach of duty, it does not accrue, and the statute does not begin to run until the time of the injury or damage.[4] Thus, in an action for damages for personal injuries caused by a falling bridge, it was held that the mere negligent act of constructing an unsafe bridge, committed thirteen years before, gave no cause of action, and that the statute did not begin to run until the injury was received.[5] But in cases of torts

20 Johns. (N.Y.) 33; Callis *v.* Waddy, 2 Munf. (Va.) 511; Miles *v.* Berry, 1 Hill (So. Car.), 296 (but see Harrell *v.* Kelly, 2 McCord, 426); York *v.* Bright, 4 Humph. (Tenn.) 312; Ellis *v.* Kelso, 18 B. Mon. (Ky.) 296. "We are of the opinion," says Mr. Justice Miller, in Bailey *v.* Glover, 21 Wall. (U. S.) 342, 349, "that the weight of judicial authority, both in this country and in England, is in the application of the rule to suits at law, as well as to suits in equity. And we are also of the opinion that this is founded in a sound and philosophical view of the principles of the statutes of limitation."

[1] Dieffenbach *v.* Roch, 112 N.Y. 621; Mawhinney *v.* Doane, 40 Kan. 676; Dabney *v.* Shelton, 82 Va. 349.

[2] Borer *v.* Chapman, 119 U. S. 587, S. C. 7 Sup. Ct. R. 342. See, also, Tapley *v.* Goodsell, 122 Mass. 176; Anderson *v.* Mitchell, 58 Ind. 592; Gray *v.* Palmer, 28 Cal. 416; Genella *v.* Relyea, 32 Cal. 159. Compare Trenouth *v.* Farrington, 54 Cal. 273; Coon *v.* Grand Lodge, 76 Cal. 354, S. C. 18 Pac. R. 384; Credit Co. *v.* Arkansas, etc., Co., 128 U. S. 258.

[3] Crim *v.* Kessing, 89 Cal. 478, S. C. 23 Am. St. R. 491; Condee *v.* Barton, 62 Cal. 1; Ætna L. Ins. Co. *v.* Hesser, 77 Iowa, 381, S. C. 14 Am. St. R. 297; Whitwell & Hoover *v.* Emory, 3 Mich. 84, S. C. 59 Am. Dec. 220, 222.

[4] Whitehouse *v.* Fellowes, 9 C. B. (N. S.) 901; Jones *v.* Grand Trunk Ry. Co., 74 Me. 356; Backhouse *v.* Bonomi, 9 H. of L. Cas. 503; Goff *v.* Pawtucket, 13 R. I. 471.

[5] Board of Com'rs *v.* Pearson, 120 Ind. 426, S. C. 16 Am. St. R. 325. Two things must, as a general rule, concur to give a complete right of action; 1, a breach of duty owing to the plaintiff; 2, damage to the plaintiff. City of North Vernon *v.* Voegler, 103 Ind. 314; Diebold *v.* Penna., etc., Co., 50 N. J. L. 478; Manning *v.* Chesapeake, etc.,

quasi ex contractu, where the gist of the action is the negligent breach of duty and not the injury resulting therefrom, the statute begins to run from the time of the negligent breach of duty.[1] Thus, where the defendant had agreed to remove his goods from a warehouse, but negligently failed to do so, and by reason thereof the plaintiff, several years afterwards, was compelled to pay damages to one to whom he had sold the warehouse, it was held that the cause of action accrued when the defendant neglected to remove the goods, and not when the plaintiff had to pay the damages.[2]

§ 296. **Nuisance.**—Each day's continuance of a public nuisance is an indictable offense, and no right to maintain it can be acquired by prescription.[3] But an action for damages caused by a private nuisance is within the statute, and when the nuisance is permanent and is at its creation productive of all the damage that can ever result from it, all damages must be recovered in one action, and the statute of limitations begins to run as soon as it is created.[4] On the other hand, if the nui-

Co. (W. Va.), 16 Lawy. R. Anno. 271; Redigan *v.* Boston, etc., Co., 155 Mass. 44, S. C. 28 N. E. R. 1133; Reardon *v.* Thompson, 149 Mass. 267; Parker *v.* Publishing Co., 69 Me. 173; Plummer *v.* Dill, 156 Mass. 426, S. C. 31 N. E. R. 128; Larmore *v.* Iron Co., 101 N. Y. 391; Woolrine's Adm'r *v.* Chesapeake, etc., Co., 36 W. Va. 329, S. C. 15 S. E. R. 81; Gillis *v.* Penna. Co., 59 Pa. St. 129; Schmidt *v.* Bauer, 80 Cal. 565; Nicholson *v.* Erie, etc., Co., 41 N. Y. 525; State, *ex rel.* Travelers Ins. Co., *v.* Harris, 89 Ind. 363, 366; Cooley on Torts, 660; Elliott on Roads and Streets, 503; 1 Sutherland on Damages, § 3.

[1] Northrop *v.* Hill, 61 Barb. (N. Y.) 136; Northrop *v.* Hill, 57 N. Y. 351; Ellis *v.* Kelso, 18 B. Mon. (Ky.) 296; Gustin *v.* Jefferson County, 15 Iowa, 158; Lathrop *v.* Snellbaker, 6 Ohio St. 276; Brown *v.* Howard, 4 Moore, 508; Howell *v.* Young, 5 B. & C. 259; Cook *v.* Rives, 13 S. & M. 328; Raynor *v.* Mintzer, 72 Cal. 585.

[2] M'Kerras *v.* Gardner, 3 Johns. (N. Y.) 137.

[3] State *v.* Berdetta, 73 Ind. 185; People *v.* Cunningham, 1 Denio (N. Y.), 524; Com. *v.* Upton, 6 Gray (Mass.), 473; Queen *v.* Brewster, 8 Upper Can. C. P. 208; Cross *v.* Mayor, 18 N. J. Eq. 305.

[4] Chicago, etc., R. R. Co. *v.* McAuley, 121 Ill. 160; Chicago, etc., Ry. Co. *v.* Loeb, 118 Ill. 203; Troy *v.* Cheshire R. R. Co., 23 N. H. 83, S. C. 55 Am. Dec. 177; Powers *v.* Council Bluffs, 45 Iowa, 652, S. C. 24 Am. R. 792; Bizer *v.* Ottumwa Hydraulic, etc., Co., 70 Iowa, 145; Krueger *v.* Grand Rapids, etc., R. R. Co., 51 Mich. 142; Little Rock, etc., Ry. Co. *v.* Chapman, 39 Ark. 463, S. C. 43 Am. R. 280; St. Louis, etc., Ry. Co. *v.* Morris, 35 Ark. 622; Kan-

sance is transient in its character or permanent but not necessarily injurious in such a way that damages can be recovered once for all, that is to say, if its continuance gives rise to a new cause of action from time to time, the statute begins to run as to each successive new cause of action from the time it accrues, and not necessarily from the date of the creation of the original nuisance.[1] The distinction above stated is supported by the authorities, but the line is not very clearly defined and in the application of the law to particular facts the authorities are not altogether harmonious.[2]

§ 297. **Real property.**—It is well settled that, in the absence of actual adverse possession, the possession of real property follows the title,[3] and the rightful owner of land is therefore deemed to be in possession until he is disseized or ousted therefrom. Hence, it follows that mere lapse of time, in the absence of adverse possession or circumstances constituting an estoppel, will not bar an action by the true owner.[4] The statute

sas Pac. Ry. Co. *v.* Mihlman, 17 Kan. 224; City of Lafayette *v.* Nagle, 113 Ind. 425.

[1] McConnel *v.* Kibbe, 29 Ill. 483; Fell *v.* Bennett, 110 Pa. St. 181; Stadler *v.* Grieben, 61 Wis. 500; Athens Mfg. Co. *v.* Rucker, 80 Ga. 291; Harback *v.* Des Moines, etc., Ry. Co., 80 Iowa, 593; Miller *v.* Keokuk, etc., Ry. Co., 63 Iowa, 680; Valley Ry. Co. *v.* Franz, 43 Ohio St. 623; Inhabitants of New Salem *v.* Eagle Mill Co., 138 Mass. 8; Culver *v.* Chicago, etc., Ry. Co., 38 Mo. App. 130; Colrick *v.* Swinburne, 105 N. Y. 503; Reed *v.* State, 108 N. Y. 407; Reid *v.* City of Atlanta, 73 Ga. 523; Werges *v.* St. Louis, etc., R. R. Co., 35 La. Ann. 641; St. Louis, etc., Ry. Co. *v.* Biggs, 52 Ark. 240, S. C. 20 Am. St. R. 174.

[2] See and compare City of North Vernon *v.* Voegler, 103 Ind. 314, and Uline *v.* N. Y. C. & H. R. R. Co., 101 N. Y. 98; 1 Sutherland on Damages, §§ 114, 116, and Mr. Starr's article on Prospective Damages, in 26 Am. L. Reg. (N. S.) 281, 345.

[3] Bradley *v.* West, 60 Mo. 33; Robinson *v.* Lake, 14 Iowa, 421, 424; Chance *v.* Branch, 58 Texas, 490; La Frombois *v.* Jackson, 8 Cow. (N. Y.) 589; United States *v.* Arredondo, 6 Peters (U. S.), 691; McIver *v.* Kyger, 3 Wheat. (U. S.) 53.

[4] Norton *v.* Sanders, 1 Dana (Ky.), 14; Smith *v.* McCall, 2 Humph. (Tenn.) 163; Davis *v.* Young, 36 La. Ann. 374; Cholmondeley *v.* Clinton, 2 Jac. & W. 1; Sedgw. & Wait on Tr. of Tit. to Land, § 730; Buswell on Lim. and Adv. Possession, § 227. But where the statute of limitations expressly requires the action to be brought within twenty years after the cause of action accrued, it has been held that twenty years' possession is sufficient to bar the action, although not adverse nor under claim of title. Vanduyn *v.* Hep-

begins to run at the time of the ouster of the true owner.[1] It runs from the accrual of a right of entry, and the action to recover possession of the land must be brought within the statutory period after the right of entry accrued.[2] Adverse possession, continuous and uninterrupted, for the statutory period is not only a good defense to an action for the recovery of the land,[3] but, in most jurisdictions, it also gives the claimant a good title, sufficient to support ejectment even as against the holder of the paper title who has entered upon the land and ousted the claimant after the expiration of the statutory period of adverse possession by the latter.[4] Although the adverse possession must be continuous and uninterrupted, it is immaterial whether it be held for the entire period by one person or by several persons in succession, provided there is a "unity of possessions," or, in other words, a privity of estate or title.[5]

ner, 45 Ind. 589, 595, citing Nepean *v.* Doe, 2 M. & W. 894, 910; Culley *v.* Doe, 11 A. & E. 1008, 1015.

[1] Robinson *v.* Lake, 14 Iowa, 421, 424; Sedgw. & Wait on Tr. of Tit. to Land, § 730.

[2] Hogan *v.* Kurtz, 94 U. S. 773, 775; Henderson *v.* Griffin, 5 Peters (U. S.), 151; Dugan *v.* Follett, 100 Ill. 581; Wright *v.* Tichenor, 104 Ind. 185.

[3] Herndon *v.* Wood, 2 A. K. Marsh. (Ky.) 44; Hogan *v.* Kurtz, 94 U. S. 773; Yard *v.* Ocean Beach Ass'n, 49 N. J. Eq. 306, S. C. 24 Atl. R. 729; Greene *v.* Couse, 13 L. R. A. 206, and note; Frakes *v.* Elliott, 102 Ind. 47, and authorities cited in following note.

[4] Cincinnati *v.* White, 6 Peters (U. S.), 431; Devacht *v.* Newsam, 3 Ohio, 57; Jackson *v.* Olitz, 8 Wend. (N. Y.) 440; Jackson *v.* Rightmyre, 16 Johns. (N. Y.) 314; Gibson *v.* Bailey, 9 N. H. 168; Jackson *v.* Dieffendorf, 3 Johns. (N. Y.) 269; Hughes *v.* Graves, 39 Vt. 359; Phillips *v.* Kent, 23 N. J. L. 155; Riverside Co. *v.* Townshend, 120 Ill. 9, 20; Roots *v.* Beck, 109 Ind. 472; Bowen *v.* Swander, 121 Ind. 164; Irey *v.* Mater (Ind.), 31 N. E. R. 69; Sharon *v.* Tucker, 144 U. S. 533, S. C. 12 Sup. Ct. R. 720.

[5] Riggs *v.* Fuller, 54 Ala. 141; Benson *v.* Stewart, 30 Miss. 49; Schrack *v.* Zubler, 34 Pa. St. 38; Coogler *v.* Rogers, 25 Fla. 853, S. C. 7 So. R. 391; Haynes *v.* Boardman, 119 Mass. 414; Reformed Church *v.* Schoolcraft, 65 N. Y. 134; Faloon *v.* Simshauser, 130 Ill. 649; Weber *v.* Anderson, 73 Ill. 439; Sherin *v.* Brackett, 36 Minn. 152; Jarrett *v.* Stevens, 36 W. Va. 445, S. C. 15 S. E. R. 177; Vance *v.* Wood, 22 Ore. 77, S. C. 29 Pac. R. 73; Landon *v.* Townshend, 129 N. Y. 166, S. C. 29 N. E. R. 71; Whipple *v.* Earick (Ky.), 19 S. W. R. 237; Tiedeman on Real Prop., § 714. Where there is no privity so that the successive possessions are not under the same right and can not all be referred to the original entry, the requisite continuity of possession is wanting. San Francisco *v.* Fulde, 37 Cal. 353; Louisville & N. R. R. Co. *v.* Philyaw, 88 Ala. 264, S. C. 6 So. R. 827; Melvin *v.* Proprietors of Locks, 5 Metc. (Mass.) 15; Smith *v.* Chapin, 31 Conn.

§ 298. Trusts.—As between the trustee and beneficiary, the statute of limitations does not run against express continuing trusts, so long as the trustee does not disavow the trust;[1] but resulting or implied trusts may be barred by lapse of time.[2] And even in the case of a direct continuing trust the statute of limitations or laches may bar relief if the trustee has repudiated the trust, or held adverse possession, with the knowledge of the beneficiary.[3] Nor does the general rule apply as between the trustee or beneficiary and a stranger. As said by Lord Hardwicke: "The rule that the statute of limitations does not bar a trust estate holds only between *cestui que trust* and trustee, not as between *cestui que trust* and trustee on one side and strangers on the other; for that would make the statute of no force at all, because there is hardly any estate of consequence without such trust, and so the act would never take place. Therefore, where the *cestui que trust* and his trustee are both out of pos-

530; Edmunds *v.* Griffin, 41 N. H. 529; Austin *v.* Rutland R. R. Co., 45 Vt. 215; American Bank Note Co. *v.* New York Elevated R. R. Co., 129 N. Y. 252; Jarrett *v.* Stevens, 36 W. Va. 445, S. C. 15 S. E. R. 177. Compare Davis *v.* McArthur, 78 N. Car. 357; Scales *v.* Cockrill, 3 Head (Tenn.), 432.

[1] Gisborn *v.* Charter Oak Life Ins. Co., 142 U. S. 326, S. C. 12 Sup. Ct. R. 277; Riddle *v.* Whitehill, 135 U. S. 621, S. C. 10 Sup. Ct. R. 924; Luco *v.* De Toro, 91 Cal. 405, S. C. 27 Pac. R. 1082; Cone *v.* Dunham, 59 Conn. 145, S. C. 8 L. R. A. 647; Nobles *v.* Hogg, 36 So. Car. 322, S. C. 15 S. E. R. 359; Mullen *v.* Doyle, 147 Pa. St. 512, S. C. 23 Atl. R. 807; Ellis *v.* Ward (Ill.), 25 N. E. R. 530; Hileman *v.* Hileman, 85 Ind. 1; Parks *v.* Satterthwaite, 132 Ind. 411, S. C. 32 N. E. R. 82; Gordon *v.* Small, 53 Md. 550; Wilson *v.* Green, 49 Iowa, 251; Clay *v.* Clay, 7 Bush. (Ky.) 95; Bostwick *v.* Dickson, 65 Wis. 593; Miles *v.* Thorne, 38 Cal. 335, S. C. 99 Am. Dec. 384, and authorities cited in note to that case; "Effect of Limitation on Trusts," 15 Fed. R. 758, 761; "Effect of Limitations on Trustees," 19 Am. Jur. 349.

[2] Reynolds *v.* Sumner, 126 Ill. 58, S. C. 1 L. R. A. 327; Parks *v.* Satterthwaite, 132 Ind. 411, S. C. 32 N. E. R. 82; Speidel *v.* Henrici, 120 U. S. 377, S. C. 7 Sup. Ct. R. 610; Logan Co. *v.* Lincoln, 81 Ill. 156; Kane *v.* Bloodgood, 7 Johns. Ch. (N. Y.) 90, S. C. 11 Am. Dec. 417; Price *v.* Mulford, 107 N. Y. 303; Cooper *v.* Cooper, 61 Miss. 676; Harlow *v.* Dehon, 111 Mass. 195; Kennedy *v.* Kennedy, 25 Kan. 151; Landis *v.* Saxton, 105 Mo. 486, S. C. 24 Am. St. R. 403.

[3] Speidel *v.* Henrici, 120 U. S. 377, S. C. 7 Sup. Ct. R. 610; Hubbell *v.* Medbury, 53 N. Y. 98; Murdock *v.* Hughes, 15 Miss. 219; Thomas *v.* Merry, 113 Ind. 83; Ward *v.* Harvey, 111 Ind. 471; Davis *v.* Coburn, 128 Mass. 377; Merriam *v.* Hassam, 14 Allen (Mass.), 516; Otto *v.* Schlapkahl, 57 Iowa, 226; Neel *v.* McElhenny, 69 Pa.

session for the time limited, the party in possession has a good bar against them both.'"[1]

§ 299. **What law governs.**—Where, as in most cases, the statute of limitations merely affects the remedy and does not extinguish the right of action itself, the law of the forum governs;[2] but it is provided by statute in many of the States that if the cause of action accrued in another State in which the defendant resided, and is fully barred by the laws of that State, such bar shall constitute a good defense in the State in which the action is tried.[3] So, where the *lex loci contractus* gives title by adverse possession and completely extinguishes the right itself, it will constitute a bar to the action wherever it is brought.[4] The same principle has also been applied to cases in which a statutory right is given, which was unknown to the common law. It is held that such a right can be enforced

St. 300; Curtis *v.* Daniel, 23 Ark. 362; Hunter *v.* Hubbard, 26 Texas, 537; Helm's Ex'rs *v.* Rogers, 81 Ky. 568; Chicago & Eastern Illinois R. R. Co. *v.* Hay, 119 Ill. 493.

[1] Lewellin *v.* Mackworth, 2 Atk. 40, S. C. Barn. 445. See, also, to same effect, Collins *v.* McCarty, 68 Texas, 150, S. C. 2 Am. St. R. 475, and note; Clark *v.* Miller, 89 Pa. St. 242; Love *v.* Love, 65 Ala. 554; Chase *v.* Cartright, 53 Ark. 358, S. C. 22 Am. St. R. 207; Watkins *v.* Specht, 7 Coldw. (Tenn.) 585; Martin *v.* Martin, 118 Ind. 227; Potter *v.* Smith, 36 Ind. 231; Felix *v.* Patrick, 145 U. S. 317; Hammond *v.* Hopkins, 143 U. S. 224.

[2] Nonce *v.* Richmond, etc., R. R. Co., 33 Fed. R. 429; Johnson *v.* Anderson, 76 Va. 766; Hawse *v.* Burgmire, 4 Col. 313; Stirling *v.* Winter, 80 Mo. 141; Goodwin *v.* Morris, 9 Ore. 322; Sawyer *v.* McCaulay, 18 S. Car. 543; Thompson *v.* Reed, 75 Me. 404; Waterman *v.* Sprague Mfg. Co., 55 Conn. 554; Walsh *v.* Mayer, 111 U. S. 31; Townsend *v.* Jemison, 9 How. (U. S.) 407; Krogg *v.* R. R. Co., 77 Ga. 202, S. C. 4 Am. St. R. 79; Paine *v.* Drew, 44 N. H. 306; Bulger *v.* Roche, 11 Pick. (Mass.) 36, S. C. 22 Am. Dec. 359, and note.

[3] Mechanics' Build. Ass'n *v.* Whitacre, 92 Ind. 547; Wood *v.* Bissell, 108 Ind. 229; Wright *v.* Strauss, 73 Ala. 227; Stewart *v.* Spaulding, 72 Cal. 264; Labatt *v.* Smith, 83 Ky. 599; Bacon *v.* Rives, 106 U. S. 99; Harrison *v.* Union Bank, 12 Neb. 499; Luce *v.* Clarke, 49 Minn. 356, S. C. 51 N. W. R. 1162.

[4] Beckford *v.* Wade, 17 Ves. 87; Lincoln *v.* Battelle, 6 Wend. (N. Y.) 475; Shelby *v.* Guy, 11 Wheat. (U. S.) 361; Cobb *v.* Thompson, 1 A. K. Marsh. (Ky.) 507; McArthur *v.* Goddin, 12 Bush (Ky.), 274; McMerty *v.* Morrison, 62 Mo. 140; Finnell *v.* So. Kan. R. R. Co., 33 Fed. R. 427; Perkins *v.* Guy, 55 Miss. 153; Fletcher *v.* Spaulding, 9 Minn. 64; Jones *v.* Jones, 18 Ala. 248. See, also, note to Bulger *v.* Roche, 22 Am. Dec. 359, 363.

only under the limitations and upon the conditions prescribed in the statute by which it is created.[1]

§ 300. **Election of remedy.**—There are many cases in which the plaintiff may have an election of remedies. Thus, where personal property has been obtained by means of a fraudulent sale, the owner may sue for the price under the contract,[2] or he may rescind the contract and sue in tort.[3] So, as a general rule, wherever there is a breach both of contract and of duty imposed by law, as in case of loss by the negligence of a common carrier, the plaintiff may sue either in contract or in tort, at his election.[4] "From certain acts or omissions of a party creating a liability to make compensation in damages, the law implies a promise to pay such compensation. Whenever this is so, and the acts or omissions are at the same time tortious, the two-fold aspect of the single liability at once follows, and the injured party may treat it as arising from the tort, and enforce it by an action setting forth the tortious acts or defaults; or may treat it as arising from an implied contract, and enforce it by an action setting forth the facts from which the promise is inferred by the law."[5] This doctrine of election is a very important one, and in determining what remedy to pursue the effect of the statute of limitations should be carefully considered. The statutory period of limitations governing actions on contracts is generally different from that applicable to actions for torts, and it may constitute a bar to one form of action but not to the other. Thus, where the plaintiff had erected a bridge under a contract with the highway commissioners,

[1] Halsey *v.* McLean, 12 Allen (Mass.), 438; Eastwood *v.* Kennedy, 44 Md. 563; Battle *v.* McArthur, 49 Fed. R. 715; Pittsburgh, C. & St. L. R. R. Co. *v.* Hine, 25 Ohio St. 629; Boyd *v.* Clark, 8 Fed. R. 849, S. C. 24 Alb. L. J. 508; Glenn *v.* Williams, 60 Md. 93. Compare Dennick *v.* Railroad Co., 103 U. S. 11.

[2] Moller *v.* Tuska, 87 N. Y. 166; Patterson *v.* Prior, 18 Ind. 440; McCullough *v.* McCullough, 14 Pa. St. 295.

[3] Kline *v.* Baker, 99 Mass. 253; Prentiss *v.* Russ, 16 Me. 30.

[4] Miss. Cent. R. R. Co. *v.* Fort, 44 Miss. 423; Whittenton Mfg. Co. *v.* M. & O. Packet Co., 21 Fed. R. 896; Pom. Rem. & Remed. Rts., § 570; Bliss on Code Pleading, § 14.

[5] Pom. Rem. & Remed. Rts., § 568. For additional illustrations, see Vasse *v.* Smith, 6 Cranch (U. S.), 226; Leach *v.* Leach, 58 N. Y. 630; Goodenow *v.* Snyder, 3 Greene (Ia.), 599; Halleck

and the commissioners tore it down and converted it to their own use, it was held that the plaintiff, having brought an action to recover the contract price, which was defeated on a plea of the statute of limitations, had made an election of remedies and could not afterwards sue in tort for the conversion.[1] So, it may be stated generally that where a party has an election between trover and assumpsit, the fact that one remedy is barred by the statute will not defeat the other so long as the statute has not also run against that remedy.[2]

§ 301. Set-off.—In the absence of statutory permission, a demand or claim barred by the statute of limitations can not, ordinarily, be used as a set-off any more than it can be made the basis of an original action;[3] but there is an exception to this rule where the demand arises out of the same transaction as the plaintiff's debt,[4] and, in some of the States there are statutes permitting a set-off notwithstanding the claim is barred by the statute of limitations.[5] So, if the set-off was not barred at the time of the bringing of the original suit the defendant may plead it, notwithstanding the statutory period has since elapsed, for the entire proceeding is regarded as one suit, and the institution of the suit by the plaintiff suspends the operation of the statute upon the set-off.[6] This is also placed upon the ground that one who has a valid set-off at the time a suit is

v. Mixer, 16 Cal. 574; Sanders *v.* Hamilton, 3 Dana (Ky.), 550.

[1] Boots *v.* Ferguson, 46 Hun (N.Y.), 129.

[2] Ivey *v.* Owens, 28 Ala. 641. See, also, Outhouse *v.* Outhouse, 13 Hun (N. Y.), 130; Lamb *v.* Clark, 5 Pick. (Mass.) 193; Morton *v.* Chandler, 8 Me. 9; Hony *v.* Hony, 1 Sim. & Stu. 568.

[3] Hicks *v.* Hicks, 3 East, 16; Ruggles *v.* Keeler, 3 Johns. (N. Y.) 263; Reed *v.* Marshall, 90 Pa. St. 345; Hinkley *v.* Walters, 8 Watts (Pa.), 260; Harwell *v.* Steel, 17 Ala. 372; Trimyer *v.* Pollard, 5 Gratt. (Va.) 460.

[4] Ord *v.* Ruspini, 2 Esp. 569; Mann *v.* Palmer, 3 Abb. Dec. (N. Y.) 162; Evans *v.* Yongue, 8 Rich. 113; Riddle *v.* Kreinbiehl, 12 La. Ann. 297; Gulick *v.* Turnpike Co., 14 N. J. L. 545; Hayes *v.* Goodwin, 4 Mete. (Ky.) 80. In other words, the exception applies where the claim or demand is in the nature of a counter-claim rather than a set-off.

[5] Warring *v.* Hill, 89 Ind. 497; Rennick *v.* Chandler, 59 Ind. 354; Steere *v.* Brownell, 124 Ill. 27.

[6] Brumble *v.* Brown, 71 N. Car. 513; Harwell *v.* Steel, 17 Ala. 372; Patrick *v.* Petty, 83 Ala. 420; Dunn *v.* Bell, 85

begun ought not to be compelled to institute an independent action during the pendency of such suit.[1]

§ 302. **Equity—Laches.**—In courts of equity, laches has always been discountenanced, even in the absence of any statute of limitations,[2] and since the adoption of such statutes, although they may not expressly apply to suits in equity, wherever concurrent jurisdiction exists, equity will follow the law.[3] This is also true, as a general rule, even where the jurisdiction in equity is exclusive;[4] but, while a court of equity will generally apply the statutory limitation by way of analogy, in such a case, it is not bound to do so.[5] It may, when its jurisdiction is exclusive, and the circumstances of the case require it in order to bring about a just and equitable result, either re-

Tenn. 581; Stillwell *v.* Bertrand, 22 Ark. 375; Belleau *v.* Thompson, 33 Cal. 495; Folsom *v.* Winch, 63 Ia. 477; Walker *v.* Clements, 15 Q. B. (N. S.) 1046.

[1] Eve *v.* Louis, 91 Ind. 457, 470.

[2] Cholmondeley *v.* Clinton, 2 Jac. & W. 1; Smith *v.* Clay, Ambler, 645; Blake *v.* Gale, L. R., 31 Ch. Div. 196, 209; McKnight *v.* Taylor, 1 How. (U. S.) 161; Speidel *v.* Henrici, 120 U. S. 377, 387; United States *v.* Beebee, 17 Fed. R. 36; Matter of Neilley, 95 N.Y. 390; Catlin *v.* Green, 120 N. Y. 441; Bell *v.* Hudson, 73 Cal. 285, S. C. 2 Am. St. R. 791; 1 Beach on Modern Equity, § 17; 12 Am. & Eng. Encyc. of Law, 533.

[3] Smith *v.* Wood, 42 N. J. Eq. 563; Breckenridge *v.* Churchill, 3 J. J. Marsh. (Ky.) 11; Tiernan *v.* Rescanniere, 10 G. & J. (Md.) 217; People *v.* Everest, 4 Hill (N. Y.), 71; Hovenden *v.* Annesley, 2 Sch. & Lef. 607; Elmendorf *v.* Taylor, 10 Wheat. (U. S.) 152; Agens *v.* Agens (N. J.), 25 Atl. R. 707; Richardson *v.* Gregory, 126 Ill. 166, S. C. 18 N. E. R. 777; Reynolds *v.* Sumner, 126 Ill. 58, S. C. 9 Am. St. R. 523; Calhoun *v.* Millard, 121 N.Y. 69; Ela *v.* Ela (Mass.), 32 N. E. R. 957. See, also, "Legal and Equitable Limitations," 7 Va. L. J. 385; "Limitations of Actions at Law and Suits in Equity," 6 Am. Jur. 62.

[4] Arnett *v.* Finney, 41 N. J. Eq. 147; Switzer *v.* Noffsinger, 82 Va. 518; City of Wheeling *v.* Campbell, 12 W. Va. 36, 46; Smith *v.* Wheeler, 58 Ia. 659; Askew *v.* Hooper, 28 Ala. 634; Hancock *v.* Harper, 86 Ill. 445.

[5] Sullivan *v.* Portland, etc., R.R. Co., 94 U. S. 807; Kline *v.* Vogel, 90 Mo. 239; Sterndale *v.* Hankinson, 1 Sim. 393; University *v.* State Nat. Bank, 96 N. Car. 280, 288; Marsh *v.* Oliver, 14 N. J. Eq. 259; Atty. General *v.* Purmort, 5 Paige (N. Y.), 620; Rockwell *v.* Servant, 54 Ill. 251; Penna. R. R. Co.'s Appeal, 125 Pa. St. 189.

fuse relief before the statute has run,[1] or give relief long after the bar of the statute is complete.[2]

§ 303. **When action is begun.**—As a general rule, the action is regarded as begun, so as to satisfy the statute of limitations, at the time of suing out the process and delivering it to a proper officer for service.[3] Under this rule, the mere filing of the complaint is not sufficient; there must be both the filing of a complaint and the issuing of a summons.[4] In some States the summons is not regarded as issued until it is placed in the hands of the officer for service,[5] while in others the mere making out of the writ is sufficient, if it be duly served thereafter.[6] In California, Maryland, and Texas it has been held that the action is commenced by filing the complaint, although no

[1] Spaulding *v.* Farwell, 70 Me. 17; Pusey *v.* Gardner, 21 W. Va. 469; Walker *v.* Ray, 111 Ill. 315, 322; Hagerty *v.* Mann, 56 Md. 522; McKnight *v.* Taylor, 1 How. (U. S.) 161; Helm *v.* Yerger, 61 Miss. 44; Kane *v.* Bloodgood, 7 Johns. Ch. (N. Y.) 90; Coster *v.* Murray, 5 Johns. Ch. (N. Y.) 522; Goode *v.* Gaines, 145 U. S. 141, S. C. 12 Sup. Ct. R. 839; Daniell *v.* East Boston Ferry Co., S. C. Whittemore, Petitioner, 157 Mass. 46, S. C. 31 N. E. R. 711; Lawrence *v.* Rokes, 61 Me. 38; Harrison *v.* Gibson, 23 Gratt. (Va.) 212.

[2] Union Bank *v.* Stafford, 12 How. (U. S.) 327; Preston *v.* Preston, 95 U. S. 200; Bancroft *v.* Andrews, 6 Cush. (Mass.) 493; Locke *v.* Caldwell, 91 Ill. 417; Lawrence *v.* Rokes, 61 Me. 38; Miner *v.* Beekman, 50 N. Y. 337; Schoener *v.* Lissauer, 107 N. Y. 111; Powell *v.* Murray, 10 Paige (N. Y.), 256; Pitzer *v.* Burns, 7 W. Va. 63.

[3] Lowry *v.* Lawrence, 1 Caines (N. Y.), 69; Beekman *v.* Satterlee, 5 Cow. (N. Y.) 519; Cheetham *v.* Lewis, 3 Johns. (N. Y.) 42; Carpenter *v.* Butterfield, 3 Johns. Cas. (N. Y.) 145; Hail *v.* Spencer, 1 R. I. 17; Kinney *v.* Lee, 10 Tex. 155; Harris *v.* Dennis, 1 Serg. & R. (Pa.) 236; Bracken *v.* McAlvey, 83 Iowa, 421, S. C. 49 N.W. R. 1022.

[4] Ramsey *v.* Foy, 10 Ind. 493; Niblack *v.* Goodman, 67 Ind. 174; Charlestown School Tp. *v.* Hay, 74 Ind. 127.

[5] Evans *v.* Galloway, 20 Ind. 479; Hancock *v.* Ritchie, 11 Ind. 48; Harshman *v.* Armstrong, 43 Ind. 126; Jackson *v.* Brooks, 14 Wend. (N. Y.) 649; Hekla Ins. Co. *v.* Schroeder, 9 Ill. App. 472; Schroeder *v.* Merchants', etc., Ins. Co., 104 Ill. 71; Sandford *v.* Dick, 17 Conn. 213; Howell *v.* Shepard, 48 Mich. 472. In Indiana where notice is given by publication the action is not commenced until the first publication. Wood *v.* Bissell, 108 Ind. 229.

[6] Gardner *v.* Webber, 17 Pick. (Mass.) 407; Bunker *v.* Shed, 8 Metc. (Mass.) 150; Chapman *v.* Goodrich, 55 Vt. 354; Allen *v.* Mann, 1 Chip. (Vt.) 94. See, also, State Bank *v.* Cason, 5 Eng. (Ark.) 479; Flournoy *v.* Lyon, 70 Ala. 308; Satterley *v.* Morgan, 33 La. Ann. 846.

summons is issued at the time.[1] A mere purpose or attempt upon the part of the defendant to evade the service of process is no excuse for not bringing the action within the statutory period, unless the statute so provides,[2] and the failure to get service, due to the negligence of the plaintiff in mailing the summons, is no excuse.[3] The issuing of a new summons after defective service of a former one,[4] or the filing of a supplemental complaint,[5] or amendment of the pleading,[6] without stating a new cause of action, where good faith exists, is generally regarded as a continuance of the original action and not a new and independent action. But where a new party defendant is brought in after the statutory period has elapsed,[7] or a writ issued against two is served upon only one,[8] the statute may constitute a bar as to the party not served in time.

[1] Sharp *v.* Maguire, 19 Cal. 577; Pimental *v.* San Francisco, 21 Cal. 351; Bank of U. S. *v.* Lyles, 10 Gill & J. 326; Tribby *v.* Wokee, 74 Texas, 142, S. C. 11 S.W. R. 1089. So, it is held in Tennessee, that a suit in equity is begun when the bill is filed and costs are secured, without the issuing of process. Collins *v.* North British, etc., Ins. Co., 91 Tenn. 432, S. C. 19 S. W. R. 525. See, also, Morris *v.* Ellis, 7 Jur. 413.

[2] Amy *v.* City of Watertown, 130 U. S. 320, S. C. 9 S. Ct. R. 537.

[3] Jewett *v.* Greene, 8 Me. 447. But inevitable accident was held a sufficient excuse in Bullock *v.* Dean, 12 Metc. (Mass.) 15. See, also, Mich. Ins. Bank *v.* Eldred, 130 U. S. 693.

[4] Isaacs *v.* Price, 2 Dill. (C. C.) 347; Burton *v.* Buckeye Ins. Co., 26 Ohio St. 467. But, see, Etheridge *v.* Woodley, 83 N. Car. 11.

[5] Evans *v.* Cleveland, 72 N. Y. 486, 488.

[6] Chicago, etc., R. R. Co. *v.* Bills, 118 Ind. 221; Rowland *v.* Murphy, 66 Tex. 534; Blanchard *v.* Lake Shore, etc., R'y Co., 126 Ill. 416, S. C. 18 N. E. R. 799; Penna. Co. *v.* Sloan, 125 Ill. 72; Sublett *v.* Hodges, 88 Ala. 491; Vanderslice *v.* Matthews, 79 Cal. 273; Wolf *v.* Bauereis, 72 Md. 481, S. C. 19 Atl. R. 1045.

[7] Leatherman *v.* Times Co., 88 Ky. 291, S. C. 21 Am. St. R. 342; Rucker *v.* Dailey, 66 Tex. 284; Meara *v.* Holbrook, 20 Ohio St. 137, 150; Thompson *v.* School Dist., 71 Mo. 495; Brown *v.* Goolsby, 34 Miss. 437. Compare Bradford *v.* Andrews, 20 Ohio St. 208. The statute generally ceases to run at the time the new party is brought in by amendment. Bell's Appeal, 115 Pa. St. 88, S. C. 2 Am. St. R. 532. But the amendment in such case does not cause the statute to run against the original defendant, where no new cause of action is stated against him. Lewis *v.* Adams, 70 Cal. 403, S. C. 11 Pac. R. 833. See, also, Lilly *v.* Tobbein (Mo.), 13 S.W. Rep. 1060, where it was held that the substitution of trustees related back to the commencement of the action.

[8] Magaw *v.* Clark, 6 Watts (Pa.), 528; Wann *v.* Pattengale, 14 Pa. St. 313.

§ 304. **Computation of time.**—Although there was at one time considerable conflict among the authorities as to whether in determining the statutory period, the day on which the cause of action accrued was to be included or excluded, the modern rule is that it should be excluded.[1] The word "year," when used in a statute or contract is construed to mean a year according to the Christian calendar,[2] unless the context indicates a different construction.[3] The construction of the word "month" is generally regulated by statute, and in some States it is to be taken as a lunar month, while in many others it is to be construed as meaning a calendar month.[4] A "day" ordinarily means twenty-four hours.[5] The law generally pays no attention to fractions of a day,[6] but where it is necessary in order to do right and accomplish justice the truth in point of time may be averred and proved.[7]

[1] Seward *v.* Hayden, 150 Mass. 158, S. C. 22 N. E. R. 629; Paul *v.* Stone, 112 Mass. 27; Cornell *v.* Moulton, 3 Denio (N.Y.), 12; Fairbanks *v.* Wood, 17 Wend. (N. Y.) 329; Weeks *v.* Hull, 19 Conn. 376; Blackman *v.* Nearing, 43 Conn. 56; Sheets *v.* Selden, 2 Wall. (U. S.) 177, 190; Savage *v.* State, 18 Fla. 970; Warren *v.* Slade, 23 Mich. 1; The Mary Blane *v.* Beehler, 12 Mo. 477; Kimm *v.* Osgood, 19 Mo. 60; Smith *v.* Cassity, 9 B. Mon. (Ky.) 192; Menges *v.* Frick, 73 Pa. St. 137; Hicks *v.* Blanchard, 60 Vt. 673; Williams *v.* Burgess, 12 Ad. & El. 635; Hardy *v.* Ryle, 9 Barn. & Cres. 603. See, also, Vogel *v.* State, 107 Ind. 374; Wright *v.* Manns, 111 Ind. 422. But, see, *contra* Norris *v.* Gawtry, Hob. R. 139; Arnold *v.* United States, 9 Cranch (U. S.), 103; Castle *v.* Burditt, 3 T. R. 623; King *v.* Adderley, Doug. 463.

[2] Thornton *v.* Boyd, 25 Miss. 598; Engleman *v.* State, 2 Ind. 91; Elliott's Appellate Proc., § 126.

[3] Knode *v.* Baldridge, 73 Ind. 54.

[4] Calendar in Indiana, Massachusetts, New York, Pennsylvania and Virginia. See Elliott's App. Proc., § 126; Buswell on Limitations, § 34. And this is the general rule in this country. 15 Am. & Eng. Encyc. of Law, 712.

[5] Benson *v.* Adams, 69 Ind. 353. See 5 Am. & Eng. Encyc. of Law, 81.

[6] Matter of Welman, 20 Vt. 653; Jones *v.* Planters' Bank, 5 Humph. (Tenn.) 619; Duffy *v.* Ogden, 64 Pa. St. 240; Arnold *v.* United States, 9 Cranch (U. S.), 103; Small *v.* McChesney, 3 Cow. (N. Y.) 19; Blydenburgh *v.* Cotheal, 4 N. Y. 418; Lester *v.* Garland, 15 Ves. 248; Portland Bank *v.* Maine Bank, 11 Mass. 204.

[7] Louisville *v.* Sav. Bank, 104 U. S. 469; Grosvenor *v.* Magill, 37 Ill. 239; Bigelow *v.* Wilson, 1 Pick. (Mass.) 485; Westbrook Mfg. Co. *v.* Grant, 60 Me. 88; Gibson *v.* Keyes, 112 Ind. 568. "I am aware," said Judge Story, in the case of Matter of Richardson, 2 Story (U. S. C. C.), 571, "that it is often laid down that in law there is no fraction of a day. But this doctrine is true only *sub modo*, and in a limited sense, where it will promote the

§ 305. **Effect of disability.**—It is a general rule that when the statute of limitations has once begun to run nothing will interrupt it;[1] but provision is usually made permitting persons under disabilities when the cause of action accrued to bring the action within a certain time after their disabilities are removed. Such provisions are strictly construed.[2] In order to toll the statute, the disability must have existed at the time the cause of action accrued,[3] and one disability can not be tacked to another.[4] But where two or more disabilities co-exist at the time the cause of action accrues, the party resting under them is not obliged to act before the last one has been

right and justice of the case. It is a mere legal fiction, and, therefore, like all other fictions, is never allowed to operate against the right and justice of the case. On the contrary, the very truth and facts, in point of time, may always be averred and proved in furtherance of the right and justice of the case."

[1] Piper *v.* Hoard, 107 N. Y. 67, S. C. 1 Am. St. R. 785, and note; Doyle *v.* Wade, 23 Fla. 90, S. C. 11 Am. St. R. 334, and note; Johnson *v.* Schumacher, 72 Tex. 334, S. C. 12 S. W. R. 207; Johnson *v.* Johnson, 80 Ga. 260; Miller *v.* Texas, etc., R. R. Co., 132 U. S. 662, S. C. 10 Sup. Ct. R. 206; Conover *v.* Wright, 6 N. J. Eq. 613; Daniel *v.* Day, 51 Ala. 431; Kistler *v.* Hereth, 75 Ind. 177; Meeks *v.* Vassault, 3 Saw. (C. C.) 206, and see authorities cited in following notes.

[2] Beckford *v.* Wade, 17 Ves. 87; Hall *v.* Bumstead, 20 Pick. (Mass.) 2; Darnall *v.* Adams, 13 B. Mon. (Ky.) 273; Sparks *v.* Roberts, 65 Ga. 571; Sacia *v.* De Graaf, 1 Cow. (N.Y.) 356; Bucklin *v.* Ford, 5 Barb. (N. Y.) 393; Amy *v.* Watertown, 130 U. S. 320; Vance *v.* Vance, 108 U. S. 514; Chemical Nat. Bank *v.* Kissane, 32 Fed. R. 429; De Moss *v.* Newton, 31 Ind. 219.

[3] McDonald *v.* Hovey, 110 U. S. 619; Hogan *v.* Kurtz, 94 U. S. 773; Lewis *v.* Marshall, 5 Pet. (U. S.) 469; Daniel *v.* Day, 51 Ala. 431; Dowell *v.* Tucker, 46 Ark. 438; McLeran *v.* Benton, 73 Cal. 329; Doyle *v.* Wade, 23 Fla. 90; Kistler *v.* Hereth, 75 Ind. 177; Lincoln *v.* Norton, 36 Vt. 679. Except, under most statutes, where it is absence from the State. In that case, if the absence occurs after the cause of action has accrued but before the statute has run, the effect is to add the time of absence to the statutory period, or, in other words, not to count it as any part of the statutory period.

[4] Millington *v.* Hill, 47 Ark. 301; Martin *v.* Letty, 18 B. Mon. (Ky.) 573; Clark *v.* Trail, 1 Metc. (Ky.) 35; Bunce *v.* Wolcott, 2 Conn. 27; White *v.* Clawson, 79 Ind. 188; Walker *v.* Hill, 111 Ind. 223; Bensell *v.* Chancellor, 3 Whart. (Pa.) 371; Butler *v.* How. 13 Me. 397; Mercer *v.* Selden, 1 How. (U. S.) 37; Becker *v.* Van Valkenburgh, 29 Barb. (N. Y.) 319; Eager *v.* Commonwealth, 4 Mass. 182; Demarest *v.* Wynkoop, 3 Johns. Ch. (N. Y.) 129.

removed.[1] The ordinary disabilities are coverture,[2] infancy,[3] insanity or "unsound mind,"[4] imprisonment[5] and absence from the State or United States,[6] and all these are included in the phrase "under legal disabilities."[7] An exception may also arise by necessity, as in case of war preventing the bringing of an action.[8]

§ 306. **New promise or acknowledgment.**—A new promise to pay a debt will take it out of the statute and start

[1] Sims *v.* Everhardt, 102 U. S. 300; Sims *v.* Bardoner, 86 Ind. 87, 96; Butler *v.* Howe, 13 Me. 397; North *v.* James, 61 Miss. 761; Blackwell *v.* Bragg, 78 Va. 529; Keeton *v.* Keeton, 20 Mo. 530; Bunce *v.* Wolcott, 2 Conn 27; Demarest *v.* Wynkoop, 3 Johns. Ch. (N. Y.) 129.

[2] See *In re* Lady Hastings, L. R., 35 Ch. Div. 94; Wood *v.* Riker, 1 Paige, Ch. (N. Y.) 616; Beloit, etc., Bank *v.* Merrill, etc., Works, 81 Wis. 142, S. C. 50 N. W. R. 505; Stephens *v.* McCormick, 5 Bush (Ky.), 181; Michan *v.* Wyatt, 21 Ala. 813; Norwood *v.* Gonzales Co., 79 Tex. 218, and see note to Moore *v.* Armstrong, 36 Am. Dec. 63, 69. But this disability has been removed in many States by the "Married Women's Acts." See Acker *v.* Acker, 81 N. Y. 143; City of Indianapolis *v.* Patterson, 112 Ind. 344; Geisen *v.* Heiderich, 104 Ill. 537; Garland Co. *v.* Gaines, 47 Ark. 558; Perkins *v.* Compton, 69 Ga. 736; Wilson *v.* Wilson, 36 Cal. 447.

[3] See Poullain *v.* Poullain, 72 Ga. 412; Tippin *v.* Coleman, 59 Miss. 641; Warren *v.* Hearne, 82 Ala. 554; Bozeman *v.* Browning, 31 Ark. 364; Jackson *v.* Moore, 13 Johns. (N. Y.) 513, S. C. 7 Am. Dec. 398; and see note to Moore *v.* Armstrong, 36 Am. Dec. 63, 68. But, see, Herff *v.* Griggs, 121 Ind. 471, S. C. 23 N. E. R. 279.

[4] See Sasser *v.* Davis, 27 Tex. 656; Oliver *v.* Berry, 53 Me. 206; Thurman *v.* Shelton, 10 Yerg. (Tenn.) 383; Anderson *v.* Layton, 3 Bush (Ky.), 87.

[5] See Downs *v.* Allen, 10 Lea (Tenn.), 652; Matilda *v.* Crenshaw, 4 Yerg. (Tenn.) 299; Piggott *v.* Rush, 4 Ad. & El. 912; McDonald *v.* Hovey, 110 U. S. 619.

[6] Absence from the United States is sometimes required. Smith *v.* Bryan, 74 Ind. 515; Harris *v.* Harris, 71 N. Car. 174; Mason *v.* Johnson, 24 Ill. 159, S. C. 76 Am. Dec. 740; Keeton *v.* Keeton, 20 Mo. 530; Gonder *v.* Estabrook, 33 Pa. St. 374. But in other jurisdictions absence from the State is sufficient. Murray *v.* Baker, 3 Wheat. (U. S.) 541; Smith *v.* Bartram, 11 Ohio St. 690; Stephenson *v.* Doe, 8 Blackf. 508, S. C. 46 Am. Dec. 489; Derham *v.* Holeman, 26 Ga. 182, S. C. 71 Am. Dec. 198; Keech *v.* Enriquez, 28 Fla. 597, S. C. 10 So. R. 91. As to meaning and effect of absence from State, see Stanley *v.* Stanley, 47 Ohio St. 225, S. C. 21 Am. St. R. 806, and note; McCann *v.* Randall, 147 Mass. 81, S. C. 9 Am. St. R. 666, and note; Langdon *v.* Doud, 6 Allen (Mass.), 423, S. C. 83 Am. Dec. 641, and note; Moore *v.* Armstrong, 36 Am. Dec. 63, 72, note.

[7] Bauman *v.* Grubbs, 26 Ind. 419; Hawkins *v.* Hawkins, 28 Ind. 66.

[8] Perkins *v.* Rogers, 35 Ind. 124; Levy *v.* Stewart, 11 Wall. (U. S.) 244; Hanger *v.* Abbott, 6 Wall. (U. S.) 532;

the statute afresh.[1] So, an acknowledgment of indebtedness, if of such a character as to give rise to the implication of a new promise, will take the case out of the statute.[2] And part payment is generally a sufficient acknowledgment of the existence of a present debt, from which a new promise may be implied.[3] But the acknowledgment may be so qualified as to prevent the implication of a new promise,[4] and if the promise is conditional it must be proved that the condition has been fulfilled.[5] The law upon this subject is well and concisely stated in a leading case by Lord Justice Mellish, as follows: "There must be one of these three things to take the case out

Hodges *v.* Taylor (Ark.), 13 S. W. R. 129; Coleman *v.* Holmes, 44 Ala. 124. See, also, Greenwald *v.* Appell, 17 Fed. R. 140; Hill *v.* Phillips, 14 R. I. 93.

[1] Le Roy *v.* Crowninshield, 2 Mason (C. C.), 151; Austin *v.* Bostwick, 9 Conn. 496; Mastin *v.* Branham, 86 Mo. 643; Engmann *v.* Estate of Immel, 59 Wis. 249; Ayers *v.* Richards, 12 Ill. 146; Krueger *v.* Krueger, 76 Tex. 178; Pickering *v.* Frink, 62 N. H. 342; Tuggle *v.* Minor, 76 Cal. 96. And see authorities cited in following notes.

[2] Yost *v.* Grim, 116 Pa. St. 527; Shaeffer *v.* Hoffman, 113 Pa. St. 1; Shepherd *v.* Thompson, 122 U. S. 231; Moore *v.* Clark, 40 N. J. Eq. 152; Bell *v.* Morrison, 1 Pet. (U. S.) 351; Holt *v.* Gage, 60 N. H. 536; Henry *v.* Root, 33 N. Y. 526; Olvey *v.* Jackson, 106 Ind. 286; Custy *v.* Donlan (Mass.), 34 N. E. R. 360; Foster *v.* Smith, 52 Conn. 449; Stewart *v.* Garrett, 65 Md. 392. It should be clear and definite. Morrell *v.* Frith, 3 M. & W. 403; Weston *v.* Hodgkins, 136 Mass. 326; Switzer *v.* Noffsinger, 82 Va. 518; Allen *v.* Webster, 15 Wend. (N.Y.) 284; Whitney *v.* Bigelow, 4 Pick. (Mass.) 110; Landis *v.* Roth, 109 Pa. St. 621, S. C. 58 Am. R. 747, and note; Miller *v.* Baschore, 83 Pa. St. 356; Fletcher *v.* Gillan, 62 Miss. 8.

[3] Barclay's Appeal, 64 Pa. St. 69; Wesner *v.* Stein, 97 Pa. St. 322; Hewlett *v.* Schenck, 82 N. Car. 234; Miner *v.* Lorman, 56 Mich. 212; Creighton *v.* Vincent, 10 Ore. 56; Conwell *v.* Buchanan, 7 Blackf. 537; Day *v.* Mayo, 154 Mass. 472, S. C. 28 N. E. R. 898; Manson *v.* Lancey, 84 Me. 380, S. C. 24 Atl. R. 880; Crockett *v.* Mitchell, 88 Ga. 166, S. C. 14 S. E. R. 118; United States *v.* Wilder, 13 Wall. (U. S.) 254; Bank of Utica *v.* Ballou, 49 N. Y. 155; Whipple *v.* Stevens, 22 N. H. 219.

[4] A'Court *v.* Cross, 3 Bing. 329; Tanner *v.* Smart, 6 Barn. & Cres. 603; Krebs *v.* Olmstead, 137 Mass. 504; Marshall *v.* Dalliber, 5 Conn. 480; Currier *v.* Lockwood, 40 Conn. 349; Curtis *v.* Sacramento, 70 Cal. 412; Sands *v.* Gelston, 15 Johns. (N.Y.) 511; Adams *v.* Cameron (Ala.), 10 So. R. 506; Lester *v.* Thompson, 91 Mich. 245, S. C. 51 N. W. R. 893; Keener *v.* Zartman, 144 Pa. St. 179, S. C. 22 Atl. R. 889; Linderman *v.* Pomeroy, 142 Pa. St. 168, S. C. 24 Am. St. R. 494.

[5] Davies *v.* Smith, 4 Esp. 36; Bethell *v.* Bethell, L. R., 34 Ch. Div. 561; Stowell *v.* Fowler, 59 N. H. 585; Robbins *v.* Otis, 1 Pick. (Mass.) 368; Boyn-

of the statute. Either there must be an acknowledgment of the debt, from which a promise to pay is to be implied, or, secondly, there must be an unconditional promise to pay the debt; or, thirdly, there must be a conditional promise to pay the debt, and evidence that the condition has been performed."[1] In most of the States the new promise or acknowledgment is required by statute to be in writing,[2] and in most jurisdictions the rules above stated in regard to the effect of an acknowledgment apply only to cases in which the action rests upon a contract or promise.[3] Thus, after the statute has barred an action for a tort, an acknowledgment will not avoid the statute.[4] The acknowledgment or promise must be made to the creditor or his agent,[5] or if to a stranger it must be made with the intention that it should be communicated to the creditor.[6] An acknowledgment of a debt made to a stranger, and not intended to be communicated to the creditor will not remove the bar of the statute.[7] And, to be effective, it must be

ton *v.* Moulton (Mass.), 34 N. E. R. 361; Richardson *v.* Bricker, 7 Colo. 58; Mattocks *v.* Chadwick, 71 Me. 313; Shepherd *v.* Thompson, 122 U. S. 231; Shown *v.* Hawkins, 85 Tenn. 214.

[1] Mitchell's Claim, L. R., 6 Ch. App. 822.

[2] Ketcham *v.* Hill, 42 Ind. 64; Kisler *v.* Sanders, 40 Ind. 78; Pierce *v.* Seymour, 52 Wis. 272, S. C. 38 Am. R. 737; Wood on Limitation of Actions, § 83. But these statutes do not change the effect of part payment, except in Nevada. Wilcox *v.* Williams, 5 Nev. 206.

[3] Oothout *v.* Thompson, 20 Johns. (N.Y.) 277; Goodwyn *v.* Goodwyn, 16 Ga. 114; Ott *v.* Whitworth, 8 Humph. (Tenn.) 494; Niblack *v.* Goodman, 67 Ind. 174; McAleer *v.* Clay Co., 38 Fed. R. 707; Taylor *v.* Spivey, 11 Ired. (N. Car.) 427; Crawford *v.* Childress, 1 Ala. 482. But see Armstrong *v.* Levan, 109 Pa. St. 177.

[4] Galligher *v.* Hullingsworth, 3 H. & McH. (Md.) 122; Oothout *v.* Thompson, 20 Johns. (N. Y.) 277; Hurst *v.* Parker, 1 B. & Ald. 92.

[5] Biddel *v.* Brizzolara, 64 Cal. 354; Gillingham *v.* Gillingham, 17 Pa. St. 302; McKinney *v.* Snyder, 78 Pa. St. 497; Croman *v.* Stull, 119 Pa. St. 91; Ringo *v.* Brooks, 26 Ark. 540; Trousdale *v.* Anderson, 9 Bush. (Ky.) 276; Kisler *v.* Sanders, 40 Ind. 78; Niblack *v.* Goodman, 67 Ind. 174; Sibert *v.* Wilder, 16 Kan. 176, S. C. 22 Am. R. 280; City of Houston *v.* Jankowskie, 76 Texas, 368, S. C. 13 S. W. R. 269.

[6] De Freest *v.* Warner, 98 N. Y. 217, 221; Wakeman *v.* Sherman, 9 N.Y. 85; Bachman *v.* Roller, 9 Baxt. (Tenn.) 409. See, also, Allen *v.* Collier, 70 Mo. 138, S. C. 35 Am. R. 416, and note.

[7] Parker *v.* Remington, 15 R. I. 300, S. C. 2 Am. St. R. 897; Matter of Kendrick, 107 N.Y. 104; Spangler *v.* Spangler, 122 Pa. St. 358, S. C. 9 Am. St. R. 114.

made by the debtor, or for him by his authorized agent.[1] Partial payment by one joint debtor does not defeat the operation of the statute as to the others.[2] But it is said that "at common law, and in those States where the common law rule prevails, a distinction is made between those cases in which a part payment is made by one of several promisors of a note before the statute of limitations has attached and those in which the payment is made after the completion of the bar of the statute; it being held in the former that the debt or demand is kept alive as to all, and in the latter that it is revived only as to the party making the payment."[3] A new promise or an unequivocal acknowledgment by a partner, while the partnership relation continues, will bind the firm.[4]

§ 307. **Special limitations.**—There are special limitations created by statute or contract, independent of the general statute of limitations, which may not only bar the remedy, but extinguish the right itself. They may be made conclusive even upon persons under disabilities,[5] and, if valid at the place

[1] McMullen *v.* Rafferty, 89 N. Y. 456, 460; Wilmer *v.* Gaither, 68 Md. 342; Ryal *v.* Morris, 68 Ga. 834; Ringo *v.* Brooks, 26 Ark. 540; Lord *v.* Morris, 18 Cal. 482; City of Houston *v.* Jankouskie, 76 Texas, 368, S. C. 13 S. W. Rep. 269; Fort Scott *v.* Hickman, 112 U. S. 150, S. C. 5 Sup. Ct. Rep. 56.

[2] Bottles *v.* Miller, 112 Ind. 584; Bell *v.* Morrison, 1 Pet. (U. S.) 351; Van Keuren *v.* Parmelee, 2 N. Y. 523; Shoemaker *v.* Benedict, 11 N. Y. 176; McMullen *v.* Rafferty, 89 N. Y. 456, 459; Steele *v.* Souder, 20 Kan. 39; Knight *v.* Clements, 45 Ala. 89; Schindel *v.* Gates, 46 Md. 604; Mayberry *v.* Willoughby, 5 Neb. 368; Willoughby *v.* Irish, 35 Minn. 63; Walters *v.* Kraft, 23 So. Car. 578; Palmer *v.* Dodge, 4 Ohio St. 21; Bush *v.* Stowell, 71 Pa. St. 208. *Contra*, Whitcomb *v.* Whiting, Doug. 652; Bound *v.* Lathrop, 4 Conn. 336; Campbell *v.* Brown, 86 N. Car. 376; Casebolt *v.* Ackerman, 46 N. J. L. 169; Shepley *v.* Waterhouse, 22 Me. 497; Bridge *v.* Gray, 14 Pick. (Mass.) 55; Hollister *v.* York, 59 Vt. 1.

[3] *Per* Lamar, J., in Cross *v.* Allen, 141 U. S. 528, S. C. 12 Sup. Ct. Rep. 67. It was held in this case that payments made by the principal before the statute had run against the note kept the debt alive as to the surety.

[4] Sears *v.* Starbird, 78 Cal. 225; Tate *v.* Clements, 16 Fla. 339, 354; Tappan *v.* Kimball, 30 N. H. 136; Wood *v.* Barber, 90 N. Car. 76; Faulkner *v.* Bailey, 123 Mass. 588; Abrahams *v.* Myers, 40 Md. 499. As to its effect, if made after dissolution of the partnership, the authorities are conflicting. They are reviewed in the note to Chardon *v.* Oliphant, 6 Am. Dec. 572. See, also, 13 Am. & Eng. Ency. of Law, 761, 762.

[5] Cochran *v.* Young, 104 Pa. St. 333;

of contract, are valid everywhere.[1] Thus, in many insurance policies, it is provided that no action can be maintained thereon unless brought within a certain time, and it is held that if valid at the place of contract, such provision is valid everywhere.[2] So, telegraph companies may stipulate that claims for damages for failure to deliver messages must be presented within a reasonable time.[3] An insurance company may, however, estop itself from insisting upon a provision in the policy limiting the time for bringing suit by engaging in negotiations with the insured and holding out reasonable hopes of an adjustment, thus deterring him from suing until after the expiration of the period of limitation.[4]

§ 308. **Presumptions.**—It was a rule of the common law as well as of equity that payment would be presumed after twenty years.[5] "This presumption, *prima facie*, obliterates the debt, and the onus of proof is upon the creditor, not to establish a new contract, as is the case when the debt is barred by the statute of limitations, but to show that payment of the debt has not been made."[6] So, it may be presumed that an account

Taylor *v.* Cranberry Iron Co., 94 N. Car. 525.

[1] Hudson *v.* Bishop, 35 Fed. R. 820; Eastwood *v.* Kennedy, 44 Md. 563; Boker *v.* Stonebraker, 36 Mo. 338.

[2] Hudson *v.* Bishop, 32 Fed. R. 519. See, also, Riddlesbarger *v.* Hartford Ins. Co., 7 Wall. (U. S.) 386; Carter *v.* Humboldt Ins. Co., 12 Ia. 287. As to when the statute begins to run, see Murdock *v.* Franklin Ins. Co., 33 W. Va. 407, S. C. 10 S. E. R. 777, S. C. 1 Lewis' Am. R.R. & Corp. Cases 24, and authorities there cited; Wood on Ins., § 443; May on Ins., § 479; German Ins. Co. *v.* Fairbank (Neb.), 5 Lewis' Am. R. R. & Corp. Cases, 90; Case *v.* Ins. Co., 83 Cal. 473, S. C. 23 Pac. R. 534.

[3] Western Union Co. *v.* Meredith, 95 Ind. 93; Western Un. Tel. Co. *v.* Scircle, 103 Ind. 227; Western Un. Tel. Co. *v.* Culberson, 79 Tex. 65, S. C. 15 S. W. Rep. 219.

[4] Allemania Fire Ins. Co. *v.* Peck, 133 Ill. 220, 24 N. E. R. 538, S. C. 2 Lewis' Am. R. R. & Corp. R. 438; Ins. Co. *v.* Whitehill, 25 Ill. 466; Ins. Co. *v.* Myer, 93 Ill. 271; Martin *v.* Ins. Co., 44 N. J. L. 485; Barnum *v.* Ins. Co., 97 N. Y. 188; Ins. Co. *v.* Hall, 12 Mich. 202; Mickey *v.* Ins. Co., 35 Ia. 174.

[5] Bean *v.* Tonnele, 94 N. Y. 381; Black *v.* Pratt, etc., Co., 85 Ala. 504; Lash *v.* Von Neida, 109 Pa. St. 207; Bass *v.* Bass, 8 Pick. (Mass.) 187; Criss *v.* Criss, 28 W. Va. 388, 397; Gregory *v.* Commonwealth, 121 Pa. St. 611; Best on Presumptions, 188.

[6] Bentley's Appeal, 99 Pa. St. 504;

has been settled after twenty years,[1] or that a mortgage has been satisfied.[2] The existence and the force and effect of such presumptions as well as the effect of laches and the statute of limitations are matters to be carefully considered by counsel for the plaintiff before bringing suit and by counsel for the defendant in determining and preparing his defense.

Gregory *v.* Commonwealth, 121 Pa. St. 611; Campbell *v.* Brown, 86 N. Car. 376. See, also, Walker *v.* Robinson, 136 Mass. 280. It may also arise from the lapse of a shorter period coupled with other circumstances. Husky *v.* Maples, 2 Coldw. (Tenn.) 25, S. C. 88 Am. Dec. 588, and note; Hughes *v.* Hughes, 54 Pa. St. 240; Briggs' Appeal, 93 Pa. St. 485; Bander *v.* Snyder, 5 Barb. (N. Y.) 63; Walker *v.* Emerson, 20 Tex. 706; Perkins *v.* Hawkins, 9 Gratt. (Va.) 649; Garnier *v.* Renner, 51 Ind. 372. But, compare, Daby *v.* Ericsson, 45 N. Y. 786; Sadler *v.* Kennedy, 11 W. Va. 187; Thomas *v.* Hunnicutt, 54 Ga. 337.

[1] Hancock *v.* Cook, 18 Pick. (Mass.) 30.

[2] Trash *v.* White, 3 Brown's Ch. 289; Giles *v.* Baremore, 5 Johns. Ch. (N.Y.) 545; Hughes *v.* Edward, 9 Wheat. (U. S.) 489. Or that a defendant was properly served, although the record fails to show service. Wilson *v.* Holt, 83 Ala. 528, S. C. 3 Am. St. R. 768; Best *v.* Vanhook (Ky.), 13 S. W. R. 119.

CHAPTER IX.

PRECAUTIONARY STEPS AND INCIDENTAL MATTERS.

§ 309. Cause of action must be complete.
310. Requisites of a complete cause of action.
311. Damages essential to a complete cause of action.
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331. Witnesses and subpœnas.
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334. Final consultation with client.
335. Notes of evidence.
336. Trial briefs.
337. Development of the theory.
338. Witnesses should be present—Depositions.
339. Care required in taking precautionary measures.

§ 309. **Cause of action must be complete.**—No recovery is legally possible unless the cause of action is complete at the time the appeal to the judicial tribunal to enforce it is made by the party injured. Mr. Broom says: "In the first place, then, the party proposing to sue should satisfy himself that he has a cause of action against the defendant; for, at the trial, he will have to prove that a right of action was vested in him before he commenced his suit."[1] Acts performed after the action is commenced may be available as evidence, but they

[1] Broom's Com., 111; Western Union Telegraph Co. *v.* Yopst, 118 Ind. 248; Brickey *v.* Irwin, 122 Ind. 51, S. C. 23 N. E. R. 694; People *v.* Holladay, 93 Cal. 241, S. C. 27 Am. St. R. 186.

can not constitute elements of the cause of action. The right of the plaintiff and the wrong of the defendant arise out of facts in existence at the time the action was begun. Whether the facts which constitute the right of which the plaintiff demands a vindication be of great or little importance, they must exist at the time the complaint or declaration on which issue is joined is filed.[1] The great facts which constitute the cause of action, no effort of the advocate can bring into existence, and he would dishonor himself and his profession by attempting to fabricate or procure evidence which should make it appear that they did exist. But there are minor facts, essential to a complete cause of action, which it is his duty to bring into existence. This duty he may justly perform by directing and advising his client, although he can not always with strict propriety perform the acts himself. For the most part these subordinate facts are such as are necessary to put the plaintiff entirely in the right and the defendant wholly in the wrong. Although these facts are minor ones, and merely supplement the main facts, yet unless they are brought into existence the advocate will be humiliated by an utter discomfiture, even though the principal facts of his client's cause of action are strong enough to repel all assaults.

§ 310. **Requisites of a complete cause of action.**—It may be said in a general way that the cause of action is complete

[1] Dean *v.* Metropolitan, etc., Co., 119 N. Y. 540, S. C. 23 N. E. R. 1054; Kaley *v.* Musgrave, 26 Ill. App. 509; Kahn *v.* Cook, 22 Ill. App. 559; Boatmen's Savings Bank *v.* McMenamy, 35 Mo. App. 198; Gulf, etc., Co. *v.* Settegast, 79 Texas, 256, S. C. 15 S. W. R. 228; Henderson *v.* Three Hundred Tons of Iron Ore, 38 Fed. R. 36. In illustration of the rule stated in the text we may instance cases in which it is held that full performance of a condition precedent pending the action will not be sufficient. Read *v.* Buffum, 79 Cal. 77, 21 Pac. R. 555; Baker *v.* Tillman, 84 Ga. 401, S. C. 11 S. E. R. 355; Holmes, etc., Co. *v.* Holmes, etc., 53 Hun, 52. As illustrating the doctrine of the text in a peculiar form may be cited the case of Bynum *v.* Burke County, 101 N. Car. 412, S. C. 8 S. E. R. 136, wherein it was held that a suit was prematurely brought to contest the validity of an election because the result of the election had not been declared by the proper officers. See, as to necessity of disaffirming contract before suing, Lange *v.* Dammier, 119 Ind. 567, S. C. 21 N. E. R. 749.

when the plaintiff has done what his contract requires or the law exacts, and the defendant has not done what his contract required of him, or has violated some duty imposed upon him by law, and by his breach of contract or violation of duty has caused legal harm or loss to the plaintiff. If there is wrongful default on the part of the defendant and no fault or breach of duty on the plaintiff's part, the latter may, in many instances, recover money immediately although if the defendant had performed his part of the contract the right to sue would be postponed, or the right to recover be limited to the recovery of property. Thus, on the tender of a deed by the vendor of land and the refusal of the vendee to execute promissory notes as provided in the contract of sale the vendor may maintain an action for the contract price of the land, but if the defendant in such a case tenders the notes and mortgage no action could be maintained until the maturity of the notes.[1] So, if a vendor of land refuses to convey land he has agreed to convey the vendee may upon tender of the purchase-money unpaid elect to treat the contract as rescinded and sue the vendor for the purchase-money paid to him.[2] The cases to which we have referred are in reality but instances of the application of the wide-reaching general principle that if a party repudiates his contract or refuses when duly requested to perform his part

[1] Russell *v.* Englehardt, 24 Mo. App. 36; Dunsworth *v.* Walter A. Wood Machine Co., 29 Ill. App. 23. The rule is, of course, the same with respect to personal property. Stephenson *v.* Repp, 47 Ohio St. 551, S. C. 25 N. E. R. 803; Trowbridge *v.* Holcomb, 4 Ohio St. 38, 44; Newman *v.* McGregor, 5 Ohio, 349; Sperry *v.* Johnson, 11 Ohio, 452, 454; Mettler *v.* Moore, 1 Blackf. 342; Baker *v.* Mair, 12 Mass. 121; Brooks *v.* Hubbard, 3 Conn. 58; Finney *v.* Gleason, 5 Wend. 393; Perry *v.* Smith, 22 Vt. 301; Smith *v.* Smith, 2 Johns. 235; Mussen *v.* Price, 4 East, 147.

[2] Chatfield *v.* Williams, 85 Cal. 518; Gillet *v.* Maynard, 5 Johns. 85; Van Van Benthuysen *v.* Crapser, 8 Johns. 259; Frost *v.* Smith, 7 Bosw. 108. In the case first named it was said: "Where the vendor under such contract, on tender of the balance of the purchase-price, refuses or neglects to convey, his default authorizes the vendee to treat the contract as at an end, and to recover the money which has been paid." See, generally, Camp *v.* Morse, 5 Denio, 161; Jenners *v.* Spraker, 2 Ind. App. Ct. 100, S. C. 27 N. E. R. 117; Taylor *v.* Hodges, 105 N. C. 344, S. C. 11 S. E. R. 156; Fields *v.* Baum, 35 Mo. App. 511.

of the contract the adverse party may sue for an entire breach of the contract.[1]

§ 311. **Damages essential to a complete cause of action.**— The general rule is that actual damages must be shown or there is no cause of action. This general rule is strikingly illustrated by the cases which decide that fraud without damages does not entitle a party to relief at law or in equity.[2] It is not, however, sufficient that damages be shown, since in order to constitute a complete cause of action a wrongful injury must also be shown.[3] The principle we have just stated finds expression in the familiar maxim: "*Damnum absque injuria.*"[4] Under the general rule we have stated, it often becomes necessary for the advocate to secure the performance of such acts as will enable him to produce evidence establishing a right to damages. It is sometimes necessary to exercise care in securing credible and competent expert witnesses to show the extent of the loss sustained, as in cases of injuries to the person; in other cases it is necessary to provide for evidence of facts which will en-

[1] Sullivan *v.* McMillan, 26 Fla. 543, 8 So. R. 450; Price *v.* Vanstone, 40 Mo. App. 207; Moore *v.* Garner, 101 N. C. 374, S. C. 7 S. E. R. 732; Fenton *v.* Alsip, 79 Cal. 402, S. C. 21 Pac. R. 839; Davenport *v.* Ladd, 38 Minn. 545, S. C. 38 N. W. R. 622; Bogle *v.* Gordon, 39 Kan. 31, S. C. 17 Pac. R. 857; Dutton *v.* Solomonson, 3 Bos. & P. 582; Hoskins *v.* Duperoy, 9 East, 498; Hutchinson *v.* Reid, 3 Campb. 329; Niland *v.* Murphy, 73 Wis. 326, S. C. 41 N. W. R. 335.

[2] Wiley *v.* Howard, 15 Ind. 169; Janesville *v.* Carpenter, 77 Wis. 288, 8 Law.R.Anno. 805, S. C. 46 N.W.R.128; National Copper Co. *v.* Minnesota Mining Co., 57 Mich. 83, S. C. 58 Am. R. 333, S. C. 23 N. W. R. 781. In Pasley *v.* Freeman, 3 T. R. 51, it was said by Butler, J., that: "Fraud without damage, or damage without fraud, gives no cause of action; but where these two concur an action lies." This general rule of the text is illustrated by the cases which hold that a judgment will not be reversed for a failure to award merely nominal damages. Norman *v.* Winch, 65 Iowa, 263; Case Threshing Machine Co. *v.* Haven, 65 Ia. 359; Wimberg *v.* Schwegeman, 97 Ind. 528; Mahoney *v.* Robbins, 49 Ind. 146; Watson *v.* Van Meter, 43 Ia. 76; Black *v.* Coan, 48 Ind. 385; Patton *v.* Hamilton, 12 Ind. 256; Tate *v.* Booe, 9 Ind. 13.

[3] City of North Vernon *v.* Voegler, 103 Ind. 314, 318; Cooley on Torts, 62, 81.

[4] Broom's Legal Maxims, 195; Weeks Damnum Absque Injuria, 7; Broom's Com. (4th ed.) 75, 621; Cooley on Torts, 81.

hance or augment the amount of recovery, as in cases where interest is sought to be recovered upon a claim or where a recovery of a penalty annexed by contract or by law to a breach of contract or violation of duty is sought. In such cases, and in those of a kindred character, the proper precautionary measures must be taken or there is danger of complete defeat or of a serious reduction of the amount of recovery.

§ 312. **Exceptions to the rule that damages must be shown.** —There is, it is obvious, a class of cases where a right of action may exist, although the complainant may have no property right or pecuniary interest in the relief he seeks. Thus, an elector of the State may have a right to the writ of mandamus to compel public officers to discharge imperative duties imposed upon them by law, although he may not have a direct money or property interest in the performance of such duties. But cases of the kind referred to are extraordinary ones, and are not governed by the rules which control actions or suits concerning ordinary controversies relative to the rights of persons or things. There is, however, an important class of cases, wherein the rights of property are involved, in which a suit may be maintained, although at the time it was brought no actual damages had accrued. The class of cases to which we refer are those wherein the failure of a property-owner to vindicate his right may result in its loss to him by lapse of time.[1] This doctrine was applied to the case of a mill owner who prosecuted an action against another owner for the wrongful diversion of a watercourse, and it was held that the action would lie although no actual damages had accrued.[2] The rule has

[1] See Cooley on Torts, 63–66.

[2] Webb *v.* The Portland Manufacturing Co., 3 Sumn. (U. S. C. C.) 189. In the case cited the old cases were very fully reviewed by Judge Story, and he stated some propositions which it is probable the modern cases would hardly sustain. In the course of his opinion the learned judge said: "Upon the whole without going farther into an examination of this subject, my judgment is, that whenever there is a clear violation of a right it is not necessary in an action of this sort to show actual damage, and if no other be proved the plaintiff is entitled to a verdict for nominal damages. And, *a fortiori*, that this doctrine applies whenever the act done is of such a nature as that by its repetition or con-

been applied to cases in which encroachments upon easements and upon public ways have been resisted by adjoining land-owners having an interest in the incorporeal hereditament as well as to the cases where land-owners have sought to prevent an implied dedication of a highway from being inferred from long continued use by the public.[1]

§ 313. **Demand—When necessary.**—There are many cases in which a demand is essential to the existence of a cause of action, and where it is necessary it must be considered as one of the minor facts of the case to be brought into existence before the action is commenced. Thus, a demand is necessary in a case where personal property is purchased by the defendant in good faith from an agent or bailee;[2] so it is necessary in some actions for a breach of contract, and the failure to deliver goods or pay money;[3] again, it is necessary in actions to evict tenants;[4] and so, too, it is necessary in an action by a principal against an agent for a failure to pay over money collected by the latter.[5] As a general rule where money is due on a contract the suit itself constitutes a sufficient demand,[6] although there

tinuance it may become the foundation or evidence of an adverse right." See, to a similar effect, Mason *v.* Hill, 3 Barn. & Ad. 304, S. C. 5 Barn. & Ad. 1.

[1] Attorney General *v.* Tarr, 148 Mass. 309, S. C. 2 Lawy. R. Anno. 87, 19 N. E. R. 358; Ross *v.* Thompson, 78 Ind. 90, 97; Faust *v.* City of Huntington, 91 Ind. 493, 496; Kyle *v.* Board of Commissioners, 94 Ind. 115, 118.

[2] Amos *v.* Sinnot, 4 Scam. (Ill.) 440; Thompson *v.* Shirley, 1 Esp. N. P. C. 31.

[3] Frazee *v.* McChord, 1 Ind. 224; High *v.* Board, 92 Ind. 580; Davis *v.* Doherty, 69 Ind. 11.

[4] Doe *v.* Wandlars, 7 T. R. 117; Jones *v.* Temple, 87 Va. 210, 12 S. E. R. 404.

[5] Jones *v.* Gregg, 17 Ind. 84; Hon *v.* Hon, 70 Ind. 135; Heddens *v.* Younglove, 46 Ind. 212. But a demand is unnecessary where the agent denies his liability, so that a demand would be fruitless. Hammett *v.* Brown, 60 Ala. 498.

[6] Olvey *v.* Jackson, 106 Ind. 286; Frazee *v.* McChord, 1 Ind. 224; Princeton *v.* Gebhart, 61 Ind. 187; Bradfield *v.* McCormick, 3 Blackf. 161; Ross *v.* Lafayette, etc., R. R. Co., 6 Ind. 297; Ferguson *v.* State, 90 Ind. 38; Kraft *v.* Thomas, 123 Ind. 513; Brackett *v.* Evans, 1 Cush. 79; Andrews *v.* Frye, 104 Mass. 234; Niemeyer *v.* Brooks, 44 Ill. 77; Union Cent. Life Ins. Co. *v.* Curtis, 35 Ohio St. 357. See, generally, Watt *v.* Pittman, 125 Ind. 168, S. C. 25 N. E. R. 191; Stevens Point, etc., Bank *v.* Kickbush, 78 Wis. 218, S. C. 47 N. W. R. 267.

are cases in which the nature and wording of the contract may be such as to render a demand necessary in order to maintain an action thereon for the payment of money.[1] Where a contract is payable in goods on demand or at no definite time or place a demand is necessary to complete the cause of action.[2] So, as a general rule, demand and notice are necessary to support an action upon a collateral undertaking.[3] But where the law makes it the duty of a public officer or a person acting in a trust capacity to pay over money at a stated time, no demand is necessary in order to maintain a suit on his bond.[4] The holder of a bill or note, in order to charge the drawer or indorser, must demand payment of the drawee or maker and give reasonable notice of the latter's failure to pay, unless some good excuse is shown for failing to do so.[5] A demand may also be necessary to support an action *ex delicto*.[6] Where the defendant is in the rightful possession of personal property, not claiming it as his own, and ready to surrender it to the true owner, or in any case where his original taking was not wrongful and there has been no conversion, a demand is necessary before an action of replevin or trover can be maintained against him.[7] But where there has been an actual conversion

[1] Bolles *v.* Stearns, 11 Cush. 320; Sweetland *v.* Barrett, 4 Mont. 217.

[2] Bradley *v.* Farrington, 4 Ark. 532; Frazee *v.* McChord, 1 Ind. 224; Martin *v.* Chauvin, 7 Mo. 277; State *v.* Mooney, 65 Mo. 494; Widner *v.* Walsh, 3 Colo. 548; Norris *v.* Milwaukee Dock Co., 21 Wis. 130; Wyatt *v.* Bailey, 1 Morr. (Iowa) 396.

[3] January *v.* Duncan, 3 McLean, C. C. 19; Rhodes *v.* Morgan, 1 Baxt. (Tenn.) 360.

[4] Higgins *v.* State, 87 Ind. 282; Moore *v.* State, 55 Ind. 360; Hudson *v.* State, 54 Ind. 378.

[5] Wood *v.* Surrells, 89 Ill. 107; Galpin *v.* Hard, 3 McCord (So. Car.), 394, S. C. 15 Am. Dec. 640; Green *v.* Lonthain, 49 Ind. 139; De Pauw *v.* Bank, 126 Ind. 553; Knickerbocker Life Ins. Co. *v.* Pendleton, 112 U. S. 696; Union Bank *v.* Willis, 8 Metc. (Mass.) 504, S. C. 41 Am. Dec. 541; Tiedeman on Commercial Paper, § 310.

[6] Griswold *v.* Burroughs, 15 N. Y. Supp. 314, S. C. 67 Hun, 558; Nunn *v.* Home Insurance Co., 31 Neb. 39, S. C. 47 N. W. R. 467; Lonsdale *v.* Nelson, 2 Barn. & Cress. 302; Penruddock's Case, 5 Co. 101; Ehle *v.* Deitz, 32 Ill. App. 547; Asheroft *v.* Bertles, 6 T. R. 652; *Ex parte* Landsdown, 5 East, 38.

[7] Sturgis *v.* Preston, 134 Mass. 372; Metcalf *v.* McLaughlin, 122 Mass. 84; Campbell *v.* Jones, 38 Cal. 507; Sherry *v.* Picken, 10 Ind. 375; Lewis *v.* Masters, 8 Blackf. 244; Roberts *v.* Norris, 67 Ind. 386; Torian *v.* McClure, 83 Ind. 310; Chapin *v.* Siger, 4 McLean

by the defendant, or where his original taking was wrongful, no demand is necessary.[1] In an action for the settlement of partnership accounts a demand should be made before suit.[2] So, a demand for a deed should precede a suit on a contract for the conveyance of land, unless the defendant denies his liability on the contract, or unless there is some other good excuse for not making a demand.[3] There are also cases in which it is important to make a demand on account of its effect upon the amount of recovery. Thus, in the absence of some agreement, express or implied, interest can not be recovered on an unliquidated claim until after a demand has been made.[4] And there are many other cases of a similar nature.[5]

C. C. 378; Hardy *v.* Keeler, 56 Ill. 152; Witherspoon *v.* Blewett, 47 Miss. 570; Tripp *v.* Pulver, 2 Hun (N. Y.), 511; Gillett *v.* Roberts, 57 N. Y. 28; Adams *v.* Wood, 51 Mich. 411; Becker *v.* Vandercook, 54 Mich. 114.

[1] La Fayette, etc., Bank *v.* Metcalf, 40 Mo. App. 494; Hayes *v.* The Massachusetts, etc., Co., 125 Ill. 626, S. C. 1 Lawy. R. Anno. 303; Waller *v.* Bowling, 108 N. C. 289, S. C. 12 Lawy. R. Anno. 261; Hamilton *v.* Browning, 94 Ind. 242; Robinson *v.* Shatzley, 75 Ind. 461; Whitlock *v.* Heard, 13 Ala. 776, S. C. 48 Am. Dec. 73; Magee *v.* Scott, 9 Cush. 148, S. C. 55 Am. Dec. 49; Perkins *v.* Barnes, 3 Nev. 557; Gilmore *v.* Newton, 9 Allen, 171; Ballou *v.* O'Brien, 20 Mich. 304; Moriarty *v.* Stofferan, 89 Ill. 528; Galvin *v.* Bacon, 11 Me. 28, S. C. 25 Am. Dec. 258; Pease *v.* Smith, 61 N. Y. 477; Haas *v.* Taylor, 80 Ala. 459; Hake *v.* Buell, 50 Mich. 89; Guthrie *v.* Olson, 44 Minn. 404, S. C. 46 N. W. R. 853. No demand is necessary before bringing an action by an assignee for the benefit of creditors in a case where a creditor fraudulently purchased the debtor's property and wrongfully applied it to the payment of his own debt. Crampton *v.* Valido Marble Co., 60 Vt. 291, S. C. 1 Lawy. R. Anno. 120. Where the trustees of a corporation misapply funds a precedent demand is not essential to complete the cause of action. Ashton *v.* Dashaway Association, 84 Cal. 61, 62.

[2] Skillen *v.* Jones, 44 Ind. 136; Krutz *v.* Craig, 53 Ind. 561.

[3] Carpenter *v.* Lockhart, 1 Ind. 434; Harshman *v.* Mitchell, 117 Ind. 312; Mather *v.* Scoles, 35 Ind. 1; Law *v.* Henry, 39 Ind. 414.

[4] Taft *v.* Stoddard, 142 Mass. 545, S. C. 8 N. E. R. 586; Barnard *v.* Bartholomew, 22 Pick. 291; Feeter *v.* Heath, 11 Wend. 479; White *v.* Miller, 78 N. Y. 393; Amee *v.* Wilson, 22 Me. 116; note to Selleck *v.* French, 6 Am. Dec. 188; Gammell *v.* Skinner, 2 Gall. (U. S.) 45; Whereatt *v.* Ellis, 68 Wis. 61; Hall *v.* Farmers', etc., Bank, 55 Iowa, 612.

[5] Rayner *v.* Bryson, 29 Md. 473; Ford *v.* Tirrell, 9 Gray, 401, S. C. 69 Am. Dec. 297; Butler *v.* Austin, 64 Cal. 3; Cruikshank *v.* Comyns, 24 Ill. 602; Pierce *v.* Life Ins. Co., 138 Mass. 151; Walker *v.* Bradley, 3 Pick. 261; Simons *v.* Walter, 1 McCord (So. Car.), 97; Scudder *v.* Morris, 3 N. J. L. 13,

§ 314. **Demand—How made.**—The advocate is required in many cases to direct when, where, how and of whom demand shall be made, for it must be made of the proper person,[1] at the right time and place,[2] and in a correct form.[3] Thus, it must be made upon the party whose duty it is to perform the contract or do the act, or upon his agent, attorney or other representative duly authorized to act in the premises.[4] But a demand upon one partner or upon one of two persons jointly liable is generally sufficient.[5] If an agent dies indebted to his principal, demand should be made upon his administrator.[6] It must be made at a reasonable time and place, but where one resting under a duty to make a demand upon a certain day was prevented by a restraining order procured by the defendant, it was held that he might make it immediately after the restraining order was dissolved,[7] and a demand made on the defendant after sunset and about five hours before suit was brought was held reasonable in another instance under the peculiar circumstances of the case.[8] The office, or the house of the defendant if he has no office, is an appropriate place to make a demand.[9] So, a demand made in the street, if not ob-

S. C. 4 Am. Dec. 382. Where a mortgage is given to secure an agreement to support the mortgagee during life a demand is essential to give a complete cause of action. Coleman *v.* Whitney, 62 Vt. 123, S. C. 9 Lawy. R. Anno. 517.

[1] Goodwin *v.* Wertheimer, 99 N. Y. 149; Whitsell *v.* Wells, 24 Pick. (Mass.) 25; Lill *v.* Russell, 22 Wis. 178.

[2] Bacon *v.* Western, etc., Co., 53 Ind. 229.

[3] Van Rensselaer *v.* Jewett, 2 N. Y. 141.

[4] Goodwin *v.* Wertheimer, 99 N. Y. 149; Mount *v.* Derick, 5 Hill (N. Y.), 455; White *v.* Demary, 2 N. H. 546; Bridgeport Bank *v.* New York, etc., Co., 30 Conn. 231. A demand upon a clerk or a writing left with the servant of the defendant may be sufficient where the defendant is absent or too ill to be seen. Morgan *v.* Gregg, 46 Barb. (N. Y.) 183; Saunders *v.* Payne, 12 N. Y. S. 735; Cass *v.* New York, etc., R. R. Co., 1 E. D. Smith (N. Y.), 522; Buxton *v.* Baughan, 6 C. & P. 674.

[5] Holbrook *v.* Holbrook, 15 Me. 9; Ball *v.* Larkin, 3 E. D. Smith (N. Y.), 555. After the partnership is dissolved, however, a demand must generally be made upon each of the partners. Keith *v.* Sturges, 51 Ill. 142; Pattee *v.* Gilmore, 18 N. H. 460, S. C. 45 Am. Dec. 385.

[6] Judah *v.* Dyott, 3 Blackf. 324.

[7] Pay *v.* Shanks, 56 Ind. 554.

[8] Richardson *v.* Learned, 10 Pick. 261.

[9] Morse *v.* Aldrich, 1 Mete. (Mass.) 544; Spencer *v.* Storrs, 38 Vt. 156.

jected to, may be sufficient.[1] It has been held that a demand accompanied by abuse and insults is not a proper demand, but a subsequent demand made in the proper manner can not be ignored by the defendant on the ground of misconduct of the plaintiff in making the former demand.[2] No stereotyped form of words need be used,[3] but in order to be on the safe side the demand should be unequivocal and should clearly indicate what is demanded and the authority of the person making it. Where, however, the amount to which the plaintiff is entitled upon a breach of a contract is clear the fact that he has demanded too much will not defeat his action.[4] Where the demand is required to be of a specific character, it is better to prepare a form in writing, and not to trust to oral evidence. It is not often that anything more than a demand expressed in general terms is required, but there are cases where it must be of a specific character. Where the contract prescribes, either in direct terms or by implication, what the demand shall be, it is safest to make it in writing.[5] Where there is doubt as to whether a formal demand is necessary, or as to whether it should be in writing, the advocate should take no risks, but should cause the demand to be specifically made in writing.

§ 315. **Admissions in demand.**—Mr. Chitty cautions the attorney against making any admission in a demand, or other communication to the adverse party, and this caution should not go unheeded.[6] Although it is a little aside from the

[1] Heard *v.* Lodge, 20 Pick. 53, S. C. 32 Am. Dec. 197.

[2] Boyden *v.* Burke, 14 How. (U. S.) 575.

[3] Henry *v.* Harbison, 23 Ark. 25; Merriam *v.* Lynch, 53 Wis. 82; Appleton *v.* Barrett, 29 Wis. 221; Kiefer *v.* Carrier, 53 Wis. 404; Buel *v.* Pumphrey, 2 Md. 261, S. C. 56 Am. Dec. 714; Peoples', etc., Co. *v.* Clark, 12 Gray, 165.

[4] Colby *v.* Reed, 99 U. S. 560. See, also, Gragg *v.* Hull, 41 Vt. 217, 222; Marine Bank *v.* Fiske, 71 N. Y. 353. See Woodward *v.* Davis, 127 Ind. 172, S. C. 26 N. E. R. 687; Fort Scott, etc., Co. *v.* Holman, 45 Kan. 167, S. C. 25 Pac. R. 585.

[5] But, in the absence of a stipulation in the contract or some statutory requirement, the demand need not necessarily be in writing. Colby *v.* Reed, 99 U. S. 560. The statute may require it to be in writing in certain cases. Seem *v.* McLees, 24 Ill. 192.

[6] 1 Chitty's Gen. Practice, 441; 2 Chitty's Gen. Practice, 56.

subject now under immediate consideration, yet it may not be inappropriate to add a caution upon a kindred topic. Admissions should be sparingly made, and only after calm deliberation. It is unsafe to make them, no matter what their character, otherwise than in writing. Experienced attorneys strongly advise against making any except upon matters of minor importance,[1] but this advice hardly goes far enough, for, even though the matter has apparently little influence upon the merits of the case or the conduct of the trial, no admission should be made without full consideration; and when made should, if practicable, be written out in full.

§ 316. **Demand—When waived or excused.**—The law does not require any man to do a vain and fruitless thing, and where a formal demand would be unavailing it is generally unnecessary. The conduct of the defendant in denying the plaintiff's claim *in toto*, or in expressly refusing performance in advance will operate as a waiver of a formal demand.[2] So, a specific objection or reason for not complying with a demand waives all other objections to the demand,[3] and an offer to pay operates as a waiver of objections to the form of the demand.[4] Where the defendant is concealed or is a non-resident so that the plaintiff is unable to make a demand upon him, it will be excused.[5] So, if the defendant is an infant of tender years,

[1] Warren's Duties of Att'ys, 190; 3 Chitty's Gen. Practice, 838. "Admissions are mostly made by those who do not know their importance." Scintillae Juris., 77. "He who concedes anything is to be considered as conceding that without which his concession would be idle, without which the thing itself could not exist." 11 Coke, 52. See, also, Troup *v.* Hulburt, 10 Barb. 354; People *v.* Hicks, 15 Barb. 153.

[2] Abels *v.* Glover, 15 La. Ann. 247; Toney *v.* Toney, 73 Ind. 34; Harshman *v.* Mitchell, 117 Ind. 312; Hawes *v.* Coombs, 34 Ind. 455; Bartlett *v.* Adams, 43 Ind. 447; Heard *v.* Lodge, 20 Pick. 53, S. C. 32 Am. Dec. 197; Benjamin *v.* Zell, 100 Pa. St. 33; Remy *v.* Olds, 88 Cal. 537, S. C. 26 Pac. R. 355.

[3] Bartlett *v.* Adams, 43 Ind. 447; Weymouth *v.* Gorham, 22 Me. 385; Baxter *v.* McKinlay, 16 Cal. 76; Spence *v.* Mitchell, 9 Ala. 744; Thompson *v.* Rose, 16 Conn. 71, S. C. 41 Am. Dec. 121.

[4] Bank *v.* Wister, 2 Peters (U. S.), 318.

[5] Jenks *v.* School Dist., 18 Kan. 356; Beckett *v.* Bledsoe, 4 Ind. 256; West *v.* Chase, 3 Ind. 301.

and there is no one representing him upon whom a demand would be availing, it may be excused.[1] And if a party to a contract, before the time fixed for performance, renders it impossible for him to perform his part of the contract, no demand is necessary.[2] So, one who is brought into court by another may be excused from making a demand that he might have been required to make if he had been the moving party.[3]

§ 317. **Tender—When necessary.**—A tender of money or goods is often required to make complete the cause of action, or make perfect the grounds of defense. It is a fundamental maxim that he who asks equity must do equity, and under the operation of this rule a tender is very often necessary to complete the cause of action. Thus, where a tax sale is invalid, but the defendant has paid taxes chargeable against the property, the right of action is not complete until a tender has been made.[4] A tender is required in cases where a rescission of a contract is sought.[5] A suit for specific performance will fail in many cases unless a tender has preceded the suit.[6] In many cases there must be a tender of money in order to maintain an action for a breach of contract. The contract may sometimes require a tender where, but for the language of the instrument, none would be exacted.[7] A tender or offer of performance is often essential to a successful defense. It is sometimes available for the purpose of reducing the damages, and then may be made after the action is brought. Where, however, it is relied on to defeat the claim for damages and costs it should be made before the plaintiff commences his suit.

§ 318. **Implied admissions by tender.**—The effect of a valid

[1] Indiana, etc., R. R. Co. *v.* Oakes, 20 Ind. 9.

[2] Boyle *v.* Guysinger, 12 Ind. 273; Wilstach *v.* Hawkins, 14 Ind. 541.

[3] Stix *v.* Sadler, 109 Ind. 254; Harshman *v.* Mitchell, 117 Ind. 312.

[4] Lombard *v.* Hatch, 60 Wis. 459; Belz *v.* Bird, 31 Kan. 139; City of Indianapolis *v.* Gilmore, 30 Ind. 414. But see Hanscom *v.* Hinman, 30 Mich. 419.

[5] Cain *v.* Guthrie, 8 Blackf. 409.

[6] 2 Pomeroy's Eq. Juris., § 1407.

[7] McCulloch *v.* Dawson, 1 Ind. 413; Wagers *v.* Dickey, 17 Ohio, 439, S. C. 49 Am. Dec. 467.

tender is to admit a liability to the extent of the sum tendered,[1] but it has been held that such an admission is not conclusive where too much has been tendered.[2] It is, however, the general rule that an effective tender concedes the amount tendered to be due. The admission is so far effective as to impose upon the party making it the burden of explaining the implied admission.

§ 319. **Tender—How made.**—The tender may be made by the debtor or his agent.[4] It is essential that the tender be made by the proper party, inasmuch as the creditor is not bound to receive money from other persons than his debtor. Thus, it is held that a tender by two persons in a suit to redeem from a sale made for taxes is insufficient if only one of them is entitled to redeem.[5] It seems to us that where two persons join in making a tender in an equitable proceeding, if it is valid as to one, the court might, upon proper explanation, relieve from the consequences of the mistake upon just terms as to costs or the like. The tender may be made either to the creditor or any one who is authorized to receive it for him.[6] It may be made to an attorney in whose hands the claim has been

[1] Monroe *v.* Chaldeck, 78 Ill. 429; Martin *v.* Whisler, 62 Ia. 416; Latham *v.* Hartford, 27 Kan. 249; Schnur *v.* Hickcox, 45 Wis. 200; Simpson *v.* Carson, 11 Ore. 361; Jones *v.* Hoar, 5 Pick. (Mass.) 285; Frink *v.* Coe, 4 G. Greene (Iowa), 555, S. C. 61 Am. Dec. 141; Burrough *v.* Skinner, 5 Burr. 2639; Cox *v.* Parry, 1 Term Rep. 464. The general rule is that money tendered and paid into court can not be withdrawn. Kansas City Transfer Co. *v.* Neiswanger, 27 Mo. App. 356. It also admits, as a general rule, the contract declared on. Yate *v.* Willan, 2 East, 128; Stoveld *v.* Brewin, 2 Barn. & Ald. 116. And may render proof of the contract unnecessary. Gutteridge *v.* Smith, 2 H. B. 374; Israel *v.* Benjamin, 3 Campb. 40. It also admits the right of the plaintiff to sue in the character in which he sues. Miller *v.* Williams, 5 Esp. 19; Lipscombe *v.* Holmes, 2 Campb. 441. But, although part of a demand is paid into court, the defendant may plead the statute of limitations as to the remainder. Long *v.* Greville, 4 D. & R. 632.

[2] Abel *v.* Opel, 24 Ind. 250.

[3] Rhodes *v.* Andrews (Ark.), 13 S. W. R. 422.

[4] Kincaid *v.* School Dist., 11 Me. 188; Brown *v.* Dysinger, 1 Rawle (Pa.), 408.

[5] Bender *v.* Bean, 52 Ark. 132, S. C. 12 S. W. R. 141.

[6] King *v.* Finch, 60 Ind. 420; Hornby *v.* Cramer, 12 How. Pr. (N. Y.) 490.

placed for collection,[1] to a clerk authorized to receive it,[2] to a husband as agent for his wife,[3] or to one of several joint creditors.[4] There are many things which must concur to make a tender good. As a general rule it must be unconditional.[5] Where it is on a money demand it must be made in gold and silver, or in bills made by positive law a legal tender.[6] It should be of the correct amount,[7] but a tender of a larger sum than is actually due is not necessarily bad if the creditor can

[1] Jackson *v.* Crafts, 18 Johns. (N.Y.) 110; McIniffe *v.* Wheelock, 1 Gray (Mass.), 600.

[2] Oatman *v.* Walker, 33 Me. 67; Hoyt *v.* Byrnes, 11 Me. 475. But not to an ordinary servant in the absence of the master. Jewett *v.* Earle, 53 N. Y. Superior Ct. 349.

[3] Conrad *v.* Druids Grand Grove, 64 Wis. 258.

[4] Prescott *v.* Everts, 4 Wis. 314; Douglas *v.* Patrick, 3 Term Rep. 683.

[5] Bevans *v.* Rees, 5 M. & W. 306; Buffum *v.* Buffum, 11 N. H. 451; Storey *v.* Krewson, 55 Ind. 397, S. C. 23 Am. R. 668; Sanford *v.* Bulkley, 30 Conn. 344; Wood *v.* Hitchcock, 20 Wend. (N. Y) 47; Odum *v.* Rutledge & J. R. R. Co., 94 Ala. 488, S. C. 10 So. R. 222; Rose *v.* Duncan, 49 Ind. 269; Elderkin *v.* Fellows, 60 Wis. 339; Henderson *v.* Cass Co., 107 Mo. 50, S. C. 18 S. W. R. 992; Latham *v.* Hartford, 27 Kan. 249. See, also, for many other authorities, the notes to Brown *v.* Gilmore, 22 Am. Dec. 223; Behaly *v.* Hatch, 12 Am. Dec. 570; Moynahan *v.* Moore, 77 Am. Dec. 468, 476. But there are cases in which a tender may be conditional. Wheelock *v.* Tanner, 39 N. Y. 481; Loughborough *v.* McNevin, 74 Cal. 250, S. C. 5 Am. St. R. 435; Strafford *v.* Welch, 59 N. H. 46; Cass *v.* Higenbotam, 100 N. Y. 248.

[6] Collier *v.* White, 67 Miss. 133, S. C. 6 So. R. 618; Summerson *v.* Hicks, 134 Pa. St. 566; Boyd *v.* Olvey, 82 Ind. 294; Cornell *v.* Green, 10 Serg. & R. (Pa.) 14; Jones *v.* Mullinix, 25 Iowa, 98; Bowen *v.* Clark, 46 Ind. 405; People *v.* Cook, 44 Cal. 638; Knox *v.* Lee, 12 Wall. (U. S.) 457; McGoon *v.* Shirk, 54 Ill. 408, S. C. 5 Am. R. 122; McClarin *v.* Nesbit, 2 Nott & McC. (So. Car.) 519; Dubuque *v.* Miller, 11 Iowa, 583. And there are cases in which the contract may expressly require the tender to be made in a certain kind of money. The entire subject is discussed and the authorities are reviewed in an article in 17 Am. L. Reg. (N. S.) 745, entitled "The Requisites of a Valid Tender." In Sanders *v.* Bryer, 152 Mass. 141, S. C. 9 Lawy. R. Anno. 255, 25 N. E. R. 86, the party tendered the money due upon an executory contract for the purchase of land and demanded a deed. After making the tender and demand he deposited the money in bank and it was held that he was bound to pay interest on the sum due and could not have specific performance without paying or tendering the interest.

[7] Robinson *v.* Cook, 6 Taunt. 336; Betterbee *v.* Davis, 3 Camp. 70; Dixon *v.* Clark, 5 Com. B. 365; Fridge *v.* State, 3 Gill. & J. (Md.) 103, S. C. 20 Am. Dec. 463; Brandt *v.* R. R. Co., 26 Iowa, 114; Helphrey *v.* R. R. Co., 29 Iowa, 480. If in goods or chattels the articles must be separated and pointed out from others of the same kind. Wy-

make the change and does not object to the amount.[1] It must be made at the proper time and place,[2] and the person to whom it is made must be given an opportunity for inspecting it.[3] There must also be an actual offer to pay at the time and place, and the money or article tendered must be actually produced,[4] unless the creditor, either expressly or impliedly, waives its production.[5] But the tender of a large sum of money in purses or bags has been held good.[6]

§ 320. Tender—Effect of.—In some jurisdictions a tender properly made and pleaded has the same effect as actual performance and is a complete answer to an action for the debt;[7] but the debtor must continue ready and willing to pay on demand, and the benefit of the tender is lost by a subsequent demand and refusal.[8] The tender of chattels at the proper time

man *v.* Winslow, 11 Me. 398, S. C. 26 Am. Dec. 542; Barney *v.* Bliss, 1 D. Chip. Vt. 399, S. C. 12 Am. Dec. 696, and note.

[1] Douglas *v.* Patrick, 3 Term Rep. 683; Bevans *v.* Rees, 5 Mees. & W. 306.

[2] 2 Wharton on Contracts, § 990; Powe *v.* Powe, 42 Ala. 113; Hall *v.* Whittier, 10 R. I. 530; Wiggin *v.* Wiggin, 43 N. H. 561, S. C. 80 Am. Dec. 192; Slingerland *v.* Morse, 8 Johns. (N. Y.) 474; Larimore *v.* Hornbaker, 21 Ind. 430; Bates *v.* Bates, 1 Miss. 401, S. C. 12 Am. Dec. 572, and note; Moynahan *v.* Moore, 77 Am. Dec. 468, and note; "Requisites of a Valid Tender," 17 Am. L. Reg. (U. S.) 745.

[3] Startup *v.* Macdonald, 6 Man. & G. 593, 624; Croninger *v.* Crocker, 62 N. Y. 151; Potts *v.* Plaisted, 30 Mich. 149.

[4] Bakeman *v.* Pooler, 15 Wend. (N. Y.) 637; Camp *v.* Simon, 34 Ala. 126; Brown *v.* Gilmore, 8 Greenl. (Me.) 107, S. C. 22 Am. Dec. 223; Barney *v.* Bliss, 1 D. Chip. (Vt.) 399, S. C. 12 Am. Dec. 696, and note; Bowen *v.* Holly, 38 Vt. 574; Ladd *v.* Patten, 1 Cranch C. C. 263; Breed *v.* Hurd, 6 Pick. (Mass.) 356; Bacon *v.* Smith, 2 La. Ann. 441, S. C. 46 Am. Dec. 549.

[5] Hazard *v.* Loring, 10 Cush. (Mass.) 267; Guthman *v.* Kearn, 8 Neb. 502; Holmes *v.* Holmes, 12 Barb. (N. Y.) 137; Appleton *v.* Donaldson, 3 Pa. St. 381; Rudulph *v.* Wagner, 36 Ala. 698.

[6] Behaly *v.* Hatch, Walker (Miss.), 369, S. C. 12 Am. Dec. 570; Wade's Case, 5 Coke, 114 a.

[7] See note to Moynahan *v.* Moore, 77 Am. Dec. 468, 488, where the authorities upon both sides of this question are collected.

[8] Bank of Benson *v.* Hove, 45 Minn. 40, S. C. 47 N. W. R. 449; Manny *v.* Harris, 2 Johns. (N. Y.) 24, S. C. 3 Am. Dec. 386; Dixon *v.* Clark, 5 Com. B. 365; Pulsifer *v.* Shepard, 36 Ill. 512; Cary *v.* Bancroft, 14 Pick. (Mass.) 315, S. C. 25 Am. Dec. 393; Rose *v.* Brown, Kirby, 293, S. C. 1 Am. Dec. 22; Burlock *v.* Cross, 16 Colo. 162, 26 Pac. R. 142. In McCalley *v.* Otey, 90 Ala. 302, S. C. 8 So. R. 157, it is held that after a refusal it is unnecessary to keep the identical money in readiness. See, generally, Blain *v.* Foster, 33 Ill. App.

and place vests the title in the creditor,[1] and he loses his right to sue upon the contract.[2] So, a tender after suit may stop the running of interest from that time,[3] and it prevents the recovery of costs which subsequently accrue.[4] It is held that where the tender is made after the action is commenced it is insufficient unless it embraces interest and accrued costs.[5]

§ 321. **Tender to be kept good.**—The tender must be kept good,[6] and, in order that this may be done, it is generally necessary to bring the money into court.[7] Payment to a referee has been held insufficient.[8] If money which has been properly paid into court to keep a tender good is afterward withdrawn by order of the court, the validity of the tender will not be affected by such withdrawal.[9] But a tender kept good by bring-

297; Werner *v.* Tuch, 127 N. Y. 217, S. C. 27 N. E. R. 845.

[1] Dewey *v.* Washburn, 12 Vt. 580; Barney *v.* Bliss, 1 D. Chip. (Vt.) 399, S. C. 12 Am. Dec. 696; Lamb *v.* Lathrop, 13 Wend. (N.Y.) 95, S. C. 27 Am. Dec. 174; Des Artes *v.* Leggett, 16 N. Y. 582; Bradshaw *v.* Davis, 12 Tex. 336. *Contra*, Stowell *v.* Read, 16 N. H. 20, S. C. 41 Am. Dec. 714; McJilton *v.* Smizer, 18 Mo. 111.

[2] Mitchell *v.* Merrill, 2 Blackf. 87, S. C. 18 Am. Dec. 128.

[3] Raymond *v.* Bearnard, 12 Johns. (N. Y.) 274, S. C. 7 Am. Dec. 317; Riley *v.* McNamara, 83 Tex. 11, 18 S.W. Rep. 141; Haynes *v.* Thom, 28 N. H. 386; Cornell *v.* Green, 10 Serg. & R. (Pa.) 14; Woodruff *v.* Trapnall, 12 Ark. 640; Dent *v.* Dunn, 3 Camp. 296.

[4] Murray *v.* Windley, 7 Ired. (N. Car.) 201, S. C. 47 Am. Dec. 324; Hills *v.* Place, 48 N. Y. 520; Carpenter *v.* Welch, 40 Vt. 251.

[5] Francis *v.* Deming, 59 Conn. 108, S. C. 21 Atl. R. 1006.

[6] Tompkins *v.* Batie, 11 Neb. 147, S. C. 38 Am. Rep. 361; Tuthill *v.* Morris, 81 N. Y. 94; Stow *v.* Russell, 36 Ill. 18; Crain *v.* McGoon, 86 Ill. 431, S. C. 29 Am. Rep. 37, and note; Aulger *v.* Clay, 109 Ill. 487; Miller *v.* McGehee, 60 Miss. 903; Rose *v.* Brown, Kirby (Conn.), 293, S. C. 1 Am. Dec. 22, and note; "Requisites of a Valid Tender," 17 Am. L. Reg. (N. S.) 745.

[7] Foster *v.* Fraser, Montreal Law R. 6 Q. B. 405; Allen *v.* Cheever, 61 N. H. 32; Halpin *v.* Phenix Ins. Co., 118 N. Y. 165; Sanders *v.* Peck, 131 Ill. 407; Goss *v.* Bowen, 104 Ind. 207; Clark *v.* Mullenix, 11 Ind. 532; Benton *v.* Shreeve, 4 Ind. 66; Morrison *v.* Jacoby, 114 Ind. 84; Park *v.* Wiley, 67 Ala. 310; Matthews *v.* Lindsay, 20 Fla. 962; Hoffman *v.* Van Dieman, 62 Wis. 362; Brooklyn Bank *v.* DeGrauw, 23 Wend. (N. Y.) 342, S. C. 35 Am. Dec. 569; note to Moynahan *v.* Moore, 77 Am. Dec. 468, 482. As to the proper form of a judgment where money is in court but tender not sufficient in amount, see Goldstein *v.* Stern, 9 N. Y. Supp. 274.

[8] Becker *v.* Boon, 61 N. Y. 317; Wing *v.* Hurlburt, 15 Vt. 607.

[9] Wright *v.* Young, 6 Wis. 127, S. C. 70 Am. Dec. 453.

ing the money into court is generally regarded as a payment, which can not be withdrawn by the defendant.[1]

§ 322. **Equitable tender.**—In equity the rules in regard to tender are not quite so strict as in law, and it is generally sufficient to offer in the complaint or petition to pay the money into court or perform the necessary acts to keep the tender good.[2] There is, however, a class of cases in which equity courts, acting upon the maxim that "He who asks equity must do equity," will require a strict tender. It is difficult to formulate with exact accuracy general rules upon this subject, but we think it safe to state the following: First. Where the duty to pay or perform is a clear one, the duty imperative and the sum due admitted or clearly evident, there must be a strict tender of payment or performance.[3] Second. Where the sum is not admitted or clearly evident but remains to be ascertained upon the hearing an offer of performance accompanied by a statement of ability, readiness and willingness to perform is sufficient.[4] It is probably true that equity will not allow a

[1] Reed *v.* Armstrong, 18 Ind. 446; Barnes *v.* Bates, 28 Ind. 15. Even if the plaintiff is non-suited he is, it is held, nevertheless entitled to the money paid into court. Stevenson *v.* Yorke, 4 Term Rep. 10; Burstall *v.* Homer, 7 Term Rep. 368; Elliott *v.* Callow, 2 Salk. 597. Money paid into court in a case in which such payment is not proper is at the risk of the party who pays it; he must bear the loss if it is converted by the clerk to his own use. Sowle *v.* Holdridge, 25 Ind. 119. If fraud is practiced upon the defendant he may recover the money which he has paid into court. Cox *v.* Brain, 3 Taunt. 95.

[2] Fall *v.* Hazelrigg, 45 Ind. 576, S. C. 15 Am. Rep. 278; Ruckle *v.* Barbour, 48 Ind. 271; Hunter *v.* Bales, 24 Ind. 299; Lynch *v.* Jennings, 43 Ind. 276; Board *v.* Henneberry, 41 Ill. 179; Hayward *v.* Munger, 14 Iowa, 516; Whelan *v.* Reilly, 61 Mo. 565; Breitenbach *v.* Turner, 18 Wis. 140; Kortright *v.* Cady, 21 N. Y. 343, S. C. 78 Am. Dec. 145; Moore *v.* Norman, 43 Minn. 428, S. C. 19 Am. St. R. 247.

[3] Taylor *v.* Reed, 5 T. B. Monr. 36; Daughdrill *v.* Sweeney, 41 Ala. 310; Morrison *v.* Jacoby, 114 Ind. 84, 95; Bailey *v.* Atlantic, etc., Co., 1 Cent. L. J. 418; Werner *v.* Tuch, 127 N. Y. 217, S. C. 24 Am. St. R. 443; Hagaman *v.* Commissioners, 19 Kan. 394; Harrison *v.* Haas, 25 Ind. 281; State Railroad Tax Cases, 92 U. S. 575, 616; City of South Bend *v.* University of Notre Dame, 69 Ind. 344; Conwell *v.* Claypool, 8 Blackf. 124; Hewett *v.* Fenstamaker, 128 Ind. 315; Montgomery *v.* Trumh, 126 Ind. 331; Jackson *v.* Smith, 120 Ind. 520, 524.

[4] Freeson *v.* Bissell, 63 N. Y. 168; Bruce *v.* Tilson, 25 N. Y. 194; St. Paul, etc., Co. *v.* Brown, 9 Minn. 157; Mor-

mere mistake in a case where the liability is not clear and definite to defeat a suit, but we suppose it to be otherwise where the mistake is without reason or excuse.

§ 323. **Waiver of tender.**—A tender may be waived either expressly or impliedly by conduct or words.[1] Thus, if the creditor states that there is nothing due him or that he will not accept any tender that may be made, this will amount to a waiver.[2] So, where a party intentionally absents himself for the purpose of evading a tender and the debtor is ready and prepared to make a proper tender, but can not do so on account of such evasion, an actual tender will be excused.[3] A specific objection made at the time of the tender precludes all other known objections and operates as a waiver of defects known to the creditor at the time and not objected to by him.[4] But it has been held that a waiver can not be established by requiring the defendant to state on the trial whether or not he would

ris *v.* Hoyt, 11 Mich. 9; Seely *v.* Howard, 13 Wis. 336; Winton *v.* Sherman, 20 Iowa, 295; Hills *v.* New York Exchange Bank, 105 U. S. 319, 321; Tacey *v.* Irwin, 18 Wall. 549.

[1] Thorne *v.* Mosher, 20 N. J. Eq. 257; Holmes *v.* Holmes, 9 N. Y. 525; Haskell *v.* Brewer, 11 Me. 258; House *v.* Alexander, 105 Ind. 109. The general rule is that if a party by his words or conduct renders it evident that a tender would be vain or fruitless none need be made. Chinn *v.* Bretches, 42 Kan. 316, S. C. 22 Pac. R. 426; McDonald *v.* Wolff, 40 Mo. App. 302; Ware *v.* Berlin, 43 La. Ann. 534, S. C. 9 So. R. 490; Hall *v.* Norwalk Ins. Co., 57 Conn. 105, S. C. 17 Atl. R. 356; Soell *v.* Hadden, 85 Tex. 182, 19 S. W. R. 1087.

[2] Lacy *v.* Wilson, 24 Mich. 479; Terrell *v.* Walker, 65 N. Car. 91; Brewer *v.* Fleming, 51 Pa. St. 102; Hazard *v.* Loring, 10 Cush. (Mass.) 267; Wesling *v.* Noonan, 31 Miss. 599; Bellinger *v.* Kitts, 6 Barb. (N. Y.) 273; Mathis *v.* Thomas, 101 Ind. 119; Turner *v.* Parry, 27 Ind. 163; Root *v.* Johnson (Ala.) 10 So. R. 293; Odum *v.* Rutledge, 94 Ala. 488, 10 So. Rep. 222.

[3] Sharp *v.* Todd, 38 N. J. Eq. 324; Noyes *v.* Clark, 7 Paige (N. Y.), 179, S. C. 32 Am. Dec. 620; Southworth *v.* Smith, 7 Cush. (Mass.) 391; Hall *v.* Whittier, 10 R. I. 530.

[4] Moynahan *v.* Moore, 9 Mich. 8, S.C. 77 Am. Dec. 468, and note; Thayer *v.* Meeker, 86 Ill. 470; Platter *v.* Board, 103 Ind. 360; House *v.* Alexander, 105 Ind. 109; Adams *v.* Helm, 55 Mo. 468; Wheelan *v.* Reilly, 61 Mo. 565; Jennings *v.* Mendenhall, 7 Ohio St. 257; Gould *v.* Banks, 8 Wend. (N. Y.) 562, S. C. 24 Am. Dec. 90; Wood *v.* Babb, 16 So. Car. 427; Walsh *v.* St. Louis, etc., Ass'n, 101 Mo. 534, S. C. 14 S. W. R. 722; Larsen *v.* Breene, 12 Colo. 480, 21 Pac. R. 498; Gradle *v.* Warner, 140 Ill. 123, 29 N. E. R. 1118.

have accepted the tender if it had been made.[1] To establish an effective waiver of a tender it must, as it has been held, appear that there was capacity to perform.[2] Where, however, there is a direct and explicit repudiation of the contract or an unqualified refusal to accept a tender, in order to show that there was no waiver there must, as we believe, be affirmative evidence showing lack of capacity, but this evidence may, of course, come from the party who claims the waiver as well as from his adversary. It may, indeed, be deduced or inferred from the circumstances disclosed by the evidence, no matter from which party the evidence may come.

§ 324. **Offer to perform.**—Akin to the tender of money or goods is the offer to perform on the part of the plaintiff.[3] Thus, where one seeks the specific performance of a contract he must show "that he has done or offered to do, or is then ready and willing to do, all the essential and material acts required of him by the agreement."[4] And there are many other cases in which the plaintiff must perform or offer to perform all the material conditions of a contract on his part before he can recover under the contract.

§ 325. **Architect's certificates—Engineer's estimates.**—In many cases, as in building contracts, and in contracts for the construction of public works, such as railroads, highways, canals, public buildings and the like, a condition precedent to the right of recovery is the certificate of an architect or the estimate of an engineer. The certificate or estimate must be secured before action is commenced, unless some valid excuse for

[1] Bluntzer *v.* Dewees, 79 Texas, 272, S. C. 15 S. W. R. 29; Tarbell *v.* Farmer's, etc., Co., 44 Minn. 471, S. C. 47 N. W. R. 152.

[2] Eddy *v.* Davis, 116 N. Y. 247, S. C. 22 N. E. R. 362. In the case referred to the court cited the cases of Nelson *v.* Plimpton Elevating Co., 55 N. Y. 484; Lawrence *v.* Miller, 86 N. Y. 131; Rigler *v.* Morgan, 77 N. Y. 318, and said: "A tender imports not only readiness and ability to perform, but actual production of the thing to be delivered. The formal requisites of a tender may be waived, but to establish a waiver there must be an existing ability to perform."

[3] 2 Wharton on Contracts, 970.

[4] 3 Pom. Eq. Jur., § 1407.

not securing it can be shown, for without it the cause of action is not complete.[1] The safe course is to secure a written certificate or estimate, although the decisions seem to authorize the conclusion that a written certificate is not necessary unless the contract so requires.[2] It is, however, held that there must be a certificate or estimate, and that a mere approval of the account will not be sufficient.[3] Some of the courts hold that an action will lie for the reasonable value of work and materials, although the certificate of the architect or engineer has not been obtained,[4] but this seems to us to be a questionable doctrine, inasmuch as it would often operate to deprive parties of the benefit of the judgment of men skilled in a particular profession and thus materially affect the rights of the parties under their contract. An architect or engineer has no right to arbitrarily and corruptly refuse a certificate, and if this be shown a recovery will be allowed.[5] It is evident, it may be

[1] United States *v.* Robeson, 9 Peters, 319; Butler *v.* Tucker, 24 Wend. 447; Scott *v.* Liverpool, etc., Co., 1 Giff. 216, S. C. 27 L. J. Ch. 641; De Worms *v.* Mellier, L. R. 16 Equ. 554; Sharpe *v.* San Paulo, etc., Co., L. R. 8 Ch. 597; Packard *v.* Van Schoick, 58 Ill. 79; Mills *v.* Weeks, 21 Ill. 568; Sweet *v.* Morrison, 116 N. Y. 19, S. C. 22 N. E. R. 276; Coey *v.* Lehman, 79 Ill. 173; Downey *v.* O'Donnell, 86 Ill. 49; Walsh *v.* Walsh, 11 Bradw. (Ill. App.) 199. See, generally, Doyn *v.* Ebbesen, 72 Wis. 284, S. C. 39 N. W. R. 535; Cushman *v.* Somers, 60 Vt. 613, S. C. 15 Atl. R. 315; Sullivan *v.* Susong, 30 So. Car. 305, S. C. 9 S. E. R. 156; Bailey *v.* Albany, etc., Co., 112 N. Y. 30, S. C. 19 N. E. R. 508. In Barney *v.* Giles, 120 Ill. 154, it is held that the rule is the same in equity as at law.

[2] Roberts *v.* Watkins, 14 C. B. N. S. 592. But in view of the questions that may arise as to what constitutes a certificate or estimate and of the doubt whether modern usage does not require that certificates and estimates be written the only safe course is to have them put in writing in all cases.

[3] Morgan *v.* Birnie, 9 Bing. 672; The Northern Gas Light Co. *v.* Parnell, 15 C. B. 630.

[4] Rude *v.* Mitchell, 97 Mo. 365, citing Neenan *v.* Donoghue, 50 Mo. 493; Dinsmore *v.* Livingston County, 60 Mo. 241; Yeats *v.* Ballentine, 56 Mo. 530.

[5] Bentley *v.* Davidson, 74 Wis. 420. In the case cited the court said: "The plaintiff failed to obtain the certificates of the architects that they had performed their contract or of the value of the extra work, or the deduction which should be made from their claim on account of the change of specifications. The contract makes the obtaining of such certificates a condition precedent to the liability of the defendants. The cases on this subject, many of them decided by this court, hold this a valid and binding agreement, and that the builder has no right of action under such contract for his

well to say, that the refusal of the architect will materially influence the theory of the case for the reason that it will require the case to proceed upon a different ground from that of the performance of a condition precedent.[1] It is generally held that the corrupt or culpably wrongful refusal to issue the proper certificate will not defeat the plaintiff, but that it is incumbent upon him to clearly show inexcusable wrong on the part of the architect or fraudulent conduct.[2] Where the plaintiff seeks to excuse the failure to obtain the certificate or estimate it is essential that the theory of the case be so framed and the pleadings so drawn as to make the excuse available as by providing for evidence of fraud, collusion, mistake or the like. It is quite well agreed that where the contract does not make the judgment and certificate of the architect or engineer conclusive, it does not have the force and effect of an award, but is *prima facie* evidence of performance,[3] so that in such cases the theory

material and labor until he obtains such certificates, unless they are withheld dishonestly and arbitrarily. If so withheld, all the cases agree that he may recover by showing the fact, and showing that he has performed the contract according to its terms."

[1] Milner *v.* Field, 5 Exch. 829; Batterbury *v.* Vyse, 2 H. & C. 42, 32 L. J. Exch. 177; Clarke *v.* Watson, 18 C. B. N. S. 278; Macintosh *v.* Great Western, etc., Co., 2 Mac. & G. 74.

[2] Kihlberg *v.* United States, 97 U. S. 398; Sweeney *v.* United States, 109 U. S. 618; Martinsburg, etc., R. Co. *v.* March, 114 U. S. 549; Perkins *v.* Giles, 50 N. Y. 228; Byron *v.* Low, 109 N. Y. 291; Delaware, etc., Co. *v.* Pennsylvania, etc., Co., 50 N. Y. 250; Kirtland *v.* Moore, 40 N. J. Eq. 106; Clarke *v.* Watson, 18 C. B. N. S. 278; Baasen *v.* Baehr, 7 Wis. 516; Hudson *v.* McCartney, 33 Wis. 331; Forristal *v.* Milwaukee, 57 Wis. 628; Oakwood, etc., Ass'n *v.* Rathborne, 65 Wis. 177; Tetz *v.* Butterfield, 54 Wis. 242; Bliss *v.* Smith, 34 Beav. 508; Scott *v.* Liverpool, etc., Co., 3 De G. & J. 334. Fraud on the part of the architect vitiates his certificate. Phillips *v.* Foxall, L. R. Q. B. 666. So, of course, does fraud on the part of one of the parties. Kimberley *v.* Dick, L. R. 13 Eq. 1; Foster *v.* Charles, 7 Bing. 105. See, generally, Stevenson *v.* Watson, L. R. 4 C. P. D. 148; Fowler *v.* Deakman, 84 Ill. 130; Badger *v.* Kerber, 61 Ill. 328. It has been held that where the owner fails to comply with his contract the production of the certificate is excused. Hall *v.* Bennett (N. Y.), 16 J. & S. 302. But this doctrine is one of limited application and can prevail only in peculiar cases.

[3] Northampton, etc., Co. *v.* Parnell, 15 C. B. 630, S. C. 24 L. J. C. P. 60; Kirk *v.* Bromly Union, 2 Phill. 640; Hartupee *v.* Pittsburgh, etc., Co., 97 Pa. 107; McCoy *v.* Able, 131 Ind. 417, S. C. 30 N. E. R. 528; Van Sickle *v.* Belknap, 129 Ind. 558; Linville *v.* State, 130 Ind. 210, S. C. 29 N. E. R. 1129.

must be so constructed as to treat the estimate or certificate as showing the performance of a condition precedent and not as dispensing with averments of performance of the contract on the part of the party seeking affirmative relief. There is a sharp conflict upon the question whether parties can in advance of any controversy completely oust the jurisdiction of the courts by binding themselves not to appeal to the courts but to abide the decision of architects, engineers or other persons selected by them to decide questions that may arise concerning future transactions or acts.[1] There is an essential difference, as we believe, in submitting a matter to arbitration after a controversy has arisen and the parties know its nature and extent and providing in advance of any dispute for a conclusive decision of a controversy that may possibly arise. It may not be amiss to remark that even the cases which carry to the utmost length the doctrine of the conclusiveness of the certificate of an architect or the estimate of an engineer do not deny that fraud or mistake may always be shown. One of the courts which has gone to a great length (not without some contradiction of its own decisions, it may be noted by the way), has held that it may be shown that an engineer made a mistake in a matter confided by the contract to his judgment.

[1] Kistler *v.* Indianapolis, etc., Co., 88 Ind. 460; Bauer *v.* Sampson Lodge, 102 Ind. 262, 269, S. C. 1 N. E. R. 571; Supreme Council, etc., *v.* Garrigus, 104 Ind. 133, S. C. 54 Am. R. 298; The Louisville, etc., Co. *v.* Donnegan *et al.*, 111 Ind. 179, S. C. 12 N. E. R. 153; Dugan *v.* Thomas, 79 Me. 221, S. C. 9 Atl. R. 354; Insurance Co. *v.* Morse, 20 Wall. 445; Scott *v.* Avery, 5 H. L. Cases, 811; Thompson *v.* Charnock, 8 Term R. 139; Reed *v.* Insurance Co., 138 Mass. 572; Stephenson *v.* Piscataqua, etc., Co., 54 Me. 55; Starkey *v.* De Graff, 22 Minn. 431; McMahon *v.* New York, etc., Co., 20 N. Y. 463, 467; Van Courtlandt *v.* Underhill, 17 Johns. 405, 410, 420; Wilson *v.* Y. & L. M. R'y Co., 11 Gill. & J. 58; Alton, etc., Co. *v.* Northcott, 15 Ill. 49; M. & S. R. Co. *v.* Veeder, 17 Ohio, 385; N. L. R. Co. *v.* McGrann, 33 Pa. St. 530; Bowery Bank *v.* Mayor, etc., 63 N. Y. 336; Thomas *v.* Fleury, 26 N. Y. 26; Butler *v.* Tucker, 24 Wend. 447; Smith *v.* Braggs, 3 Denio, 73; Smith *v.* Brady, 17 N. Y. 173; Corning *v.* Corning, 6 N. Y. 97; Pharis *v.* Geer, 31 Hun, 443; Schultz *v.* T. N. R. Co., 89 N. Y. 242; O'Reilly *v.* Kerns, 52 Pa. St. 214; Vandervecker *v.* Vermont Central R. Co., 27 Vt. 130; Ranger *v.* Great Western, etc., Co., 5 H. L. Cases, 72; Fudickar *v.* Mutual Life Ins. Co., 62 N. Y. 392; Kidwell *v.* Baltimore, etc., Co., 11 Gratt. 676.

§ 326. **Taking possession—Completing evidence of title or right.**—It sometimes occurs that, in order to make a complete cause of action, the chose in action or the property should be taken into possession. One who sues for the vindication of a right founded upon a chose in action or upon a claim to property must ordinarily show a complete title.[1] At common law an assignee of many demands could not sue at law, but it is now almost everywhere different because made so by positive statute. But even where an assignee may sue the ordinary rule is that he must have possession of the chose in action upon which he founds his complaint or declaration. It is true that in most of the States a party not in possession may take steps to complete his right to the demand upon which he sues by proceeding against the person who wrongfully withholds it from him before suing the debtor or promisor, or by making him a party where the statute permits that course to be pursued. The title which must rest in the plaintiff at the time he begins his action is such a title as will give him a right to recover. The theory of the case should be constructed with this rule in view and the development of the theory be made effective by competent evidence establishing such a title. Where the plaintiff sues in a representative capacity it is necessary that such steps be taken as show a right in him in that capacity. A person may have a right to act in a representative capacity and yet no complete cause of action. This is well illustrated by the cases in which it is held that a receiver can not sue unless invested with authority to prosecute actions and suits.[2] The general rule is that a suit can not be main-

[1] Stephens' Pleading, 304; Carter *v.* Carter, 82 Va. 624; Republic Iron Co. *v.* Jones, 37 Fed. R. 721; Wright *v.* McCampbell, 75 Texas, 644, S. C. 13 S.W. R. 293; Keyser *v.* Renner, 87 Va. 249, S. C. 12 S. E. R. 406; Lemon *v.* Temple, 7 Ind. 556; Rowell *v.* Klein, 44 Ind. 290; Hill *v.* Shalter, 73 Ind. 459; Richardson *v.* Snider, 72 Ind. 425.

[2] Sawyer *v.* Harrison, 43 Minn. 297, S. C. 45 N. W. R. 434; Wynn *v.* Lord Neuborough, 3 Bro. C. C. 88; Green *v.* Winter, 1 Johns. Ch. 60; *In re* Merritt, 5 Paige, 125; Merritt *v.* Lyon, 16 Wend. 405, 410; Reynolds *v.* Pettyjohn, 79 Va. 327; Battle *v.* Davis, 66 N. Car. 252; Screven *v.* Clark, 48 Ga. 41; Manlove *v.* Burger, 38 Ind. 211; Garver *v.* Kent, 70 Ind. 428. See, generally, Kehr *v.* Hall, 117 Ind. 405; State *v.* Sullivan, 120 Ind. 197; Catlin *v.* Wilcox, 123 Ind. 477; Griesel *v.*

tained against a receiver without first obtaining leave of the court that appointed him.[1] In suits or actions by the assignees of an insolvent debtor it is often necessary to take steps to fully complete the right to sue by perfecting the title to property by causing the deed of assignment or the like to be recorded as the statute requires.[2] In some jurisdictions it is necessary for the assignee, in order to complete his right or title, to take possession of the property assigned.[3] We have gone into the specific subject as far as it is necessary since we have shown that in many cases subsidiary facts must be brought into existence by the advocate by securing the performance of acts essential to a complete cause of action, but we have barely touched upon the general subject, believing that such hints as we have given will be sufficient to remind the advocate of the necessity of taking the proper precautionary measures.

Schmal, 55 Ind. 475; Keen *v.* Breckenridge, 96 Ind. 69. There is a conflict of opinion as to whether a receiver may sue in the court which appointed him without an order authorizing it. Affirming that he can, Tillinghast *v.* Champlin, 4 R. I. 173. *Contra*, Wilkinson *v.* Rutherford, 49 N. J. L. 241, S. C. 8 Atl. R. 507; Glenn *v.* Dodge (Dist. of Col.), 3 Cent. R. 283, 285. It has been held that the rule denying the receiver a right to sue in cases where he is not authorized to bring suits by the court that appointed him does not apply to cases where the suit is upon a contract made with him in his representative capacity. Pouder *v.* Catterson, 127 Ind. 434, S. C. 26 N. E. R. 66.

[1] Wiswell *v.* Sampson, 14 How. (U. S.) 52; Express Co. *v.* Railroad Co., 99 U. S. 191, 198; Davis *v.* Gray, 16 Wall. 203, 218; Barton *v.* Barbour, 104 U. S. 126; Reed *v.* Axtell, 84 Va. 231; Jones *v.* Brouse, 32 W. Va. 444, S. C. 9 S. E. R. 873; Thompson *v.* Scott, 4 Dill, 508; Kennedy *v.* Indianapolis, etc., Co., 3 Fed. R. 97; Little *v.* Dusenberry, 46 N. J. L. 614, S. C. 50 Am. R. 445; De Graffenried *v.* Brunswick, etc., Co., 57 Ga. 22; Keen *v.* Breckenridge, 96 Ind. 69; Meredith Savings Bank *v.* Simpson, 22 Kan. 414; Melendy *v.* Barbour, 78 Va. 544; Payne *v.* Baxter, 2 Tenn. Ch. 517; Hills *v.* Parker, 111 Mass. 508; Heath *v.* Missouri, etc., Co., 83 Mo. 617, 623. In the case of Kortjohn *v.* Seimers, 29 Mo. App. 271, it was held that an answer in the nature of a cross-bill can not be filed against a receiver unless leave is first obtained. The decision in Brown *v.* Rauch, 1 Wash. 498, S. C. 20 Pac. R. 785, carries the general doctrine very far,—too far as it seems to us,—for it is that leave to sue is a jurisdictional fact which may be raised at any stage of the proceedings.

[2] Wheeler *v.* Hawkins, 101 Ind. 486; Foster *v.* Brown, 65 Ind. 234.

[3] Hudson *v.* Maze, 3 Scam. 578; Ball *v.* Loomis, 29 N. Y. 412; Smith *v.* Leavitts, 2 Ala. 175; Connah *v.* Sedgwick, 1 Barb. 10.

§ 327. **Notice.**—There are cases in which a notice constitutes one of the minor facts essential to the existence of a complete cause of action. In some cases a guarantor is entitled to notice of the default of the principal.[1] Notice to a municipal corporation of a defect in a street, caused by the act of a wrong-doer, may be required to fix a right of recovery.[2] In the important class of cases involving the rights of landlord and tenant, notice is often an indispensable fact.[3] In this class of cases the notice should be in writing and in proper form.[4] It must be given by the proper person to the person entitled to receive it.[5] It must be given at the proper time, and its service must be such as the law requires[6]. It is often the duty of the lawyer to advise his client to give notice in order to secure for him rights in a future action that he has reason to expect will be instituted. Thus, it is expedient for the counsel of a municipal corporation to give notice of the action brought against it for injuries caused by an obstruction in a street to the person who

[1] Russell *v.* Clark, 7 Cranch, 69; Conner *v.* Higginson, 1 Mason, 323; Allen *v.* Pike, 3 Cush. 238. So, notice of the dishonor of a bill or note is generally necessary in order to hold the drawer or indorser. Disborough *v.* Vanness, 3 Halstead (N. J. L.), 231; Treadway *v.* Nicks, 3 McCord (So. Car.), 195; Musson *v.* Lake, 4 How. (U. S.) 262; Ogden *v.* Saunders, 12 Wheat. (U. S.) 213; Webber *v.* Matthews, 101 Mass. 481; Tiedeman on Commercial Paper, §§ 234, 236.

[2] Requa *v.* City, 45 N. Y. 129; Bassett *v.* City, 53 Mo. 290; S. C. 14 Am. R. 446; Elliott on Roads and Streets, 475.

[3] Taylor on Landlord and Tenant, § 466; King *v.* Connolly, 44 Cal. 236.

[4] Johnston *v.* Hudlestone, 4 B. & C. 922. But, as a general rule, no particular form is required. Doyle *v.* Teas, 5 Ill. 202; Tillinghast *v.* Champlin, 4 R. I. 173, S. C. 67 Am. Dec. 510.

[5] Comstock *v.* Cavanach, 17 R. I. 233, S. C. 21 Atl. R. 498; Connell *v.* Chambers, 22 Neb. 302, S. C. 34 N. W. R. 636; Thomas *v.* Black (Del.), 18 Atl. R. 771; Rosenblat *v.* Perkins, 18 Ore. 156, S. C. 22 Pac. R. 598; Johnson *v.* Donaldson, 17 R. I. 107, S. C. 20 Atl. R. 242; Williams *v.* Shelden, 61 Mich. 311. See, generally, Beiler *v.* Dovoll, 40 Mo. App. 251; Hunter *v.* Frost, 47 Minn. 1, S. C. 49 N.W. R. 327; Swope *v.* Hopkins, 119 Ind. 125, S. C. 21 N. E. R. 462; Freeman *v.* Wilson, 16 R. I. 524, S. C. 17 Atl. R. 921; Adams *v.* Cohoes, 53 Hun, 260; Drey *v.* Doyle, 28 Mo. App. 249; Scott *v.* Willis, 122 Ind. 1. Where the title of the landlord is denied no notice to quit is necessary. Bodwell Granite Co. *v.* Lane, 83 Me. 168, S. C. 21 Atl. R. 829; Amrick *v.* Brubaker, 101 Mo. 473, S. C. 14 S. W. R. 627; Appleton *v.* Ames, 150 Mass. 34, S. C. 22 N. E. R. 69; Wade on Notice, §§ 615-626; Taylor on Landlord and Tenant, § 481.

[6] Jones *v.* Marsh, 4 Term R. 464;

placed it there.[1] Substantial benefit may be secured by a grantee who holds under a deed with covenants of warranty by giving notice to his grantor of an action brought to evict him from the land.[2] Where there is no statute prescribing a form of notice, it is, in general, sufficient if the notice is fairly and reasonably specific, but where there is a statute prescribing the form of the notice the essential requirements of the statute must be obeyed.[3] In cases where a party has assumed an obligation which continues in force until revoked it is often necessary in order to complete the cause of defense to give notice of revocation.[4] Where a party is given an option to make or declare an entire debt due upon a partial default notice is often requisite to an effective exercise of the right. There is, however, conflict in the authorities as to whether notice is necessary in cases where the contract does not expressly or impliedly provide for notice of the election to declare to treat the entire debt as due, many of the courts holding that the bringing of the suit is sufficient notice of an election by the creditor.[5] There

Walker *v.* Sharpe, 103 Mass. 154; 1 Chitty Gen. Prac., 483.

[1] Westfield *v.* Mayo, 122 Mass. 100. See, generally, as to notice as essential to a cause of action or defense, Heimann *v.* Western Union Tel. Co., 57 Wis. 562; Young *v.* Western Union Tel. Co., 65 N. Y. 163; Cole *v.* Western Union Tel. Co., 33 Minn. 227; Wolf *v.* Western Union Tel. Co., 62 Pa. St. 83; Western Union Tel. Co. *v.* McKinny, 2 Texas Ct. of App. Civil Cases, 644.

[2] Morgan *v.* Muldoon, 82 Ind. 347; Miner *v.* Clark, 15 Wend. 425.

[3] Allen *v.* Strickland, 100 N. Car. 225, S. C. 6 S. E. R. 780; Bollinger *v.* Manning, 79 Cal. 7, S. C. 21 Pac. R. 375.

[4] Tischler *v.* Hofheimer, 83 Va. 35, S. C. 4 S. E. R. 370; Offord *v.* Davies, 12 C. B. N. S. 748; Grant *v.* Campbell, 6 Dow, 239.

[5] Harper *v.* Ely, 56 Ill. 179; Johnson *v.* Van Velsor, 43 Mich. 208; English *v.* Carney, 25 Mich. 178; Lowenstein *v.* Phelan, 17 Neb. 429; Hoodless *v.* Reid, 112 Ill. 105; Heath *v.* Hall, 60 Ill. 344; Morgan, etc., Co. *v.* Texas, etc., Co., 137 U. S. 171; Buchanan *v.* Berkshire Life Ins. Co., 96 Ind. 510. *Contra*, Basse *v.* Gallegger, 7 Wis. 442; Marine Bank *v.* International Bank, 9 Wis. 57. See Redman *v.* Purrington, 65 Cal. 271; Dean *v.* Applegarth, 65 Cal. 391; Leonard *v.* Tyler, 60 Cal. 299; Swett *v.* Stark, 31 Fed. R. 858; Wilson *v.* Winter, 6 Fed. R. 16; Bosseel *v.* Jarvis, 15 Wis. 571; Monroe *v.* Fohl, 72 Cal. 568, S. C. 14 Pac. R. 514; Dean *v.* Ridgeway, 82 Iowa, 757, S. C. 48 N. W. R. 923; Meier *v.* Meier, 105 Mo. 411, S. C. 16 S. W. R. 223; Hewett *v.* Dean, 91 Cal. 5, S. C. 27 Pac. R. 423; Campbell *v.* West, 86 Cal. 197, S. C. 24 Pac. R. 1000.

are cases under the law governing contracts of guaranty in which notice of acceptance or of default is essential to a complete right of action,[1] but a notice is not essential, by any means, in all cases of guaranty.[2] In many jurisdictions a surety may secure important rights by giving the creditor notice to sue, and it is generally held that to obtain the benefit of the statute the notice must contain positive directions to sue.[3]

§ 328. **Notice for inspection of documents.**—Notices are often required in order to prepare for trial by securing an inspection of documents in the hands of the adverse party. In order to secure this right the course prescribed by law must be carefully pursued.[4] It is never to be forgotten that, "If a case can not be made out by legal evidence it can not be made out at all."[5] It must be kept in mind, too, that courts will receive only the best evidence, unless a foundation has been properly laid for the introduction of secondary evidence. The efforts

[1] Ruffner *v.* Love, 33 Ill. App. 601; Edmondston *v.* Drake, 5 Peters, 624; Adams *v.* Jones, 12 Peters, 207; Lawton *v.* Maner, 9 Rich. (So. Car.) 335; Sollee *v.* Meugy, 1 Bailey Law (So. Car.), 620; Claflin *v.* Briant, 58 Ga. 414; Taylor *v.* McClung, 2 Houston (Del.), 24; Kellogg *v.* Stockton, 29 Pa. St. 460; Menard *v.* Scudder, 7 La. Ann. 385; Cooke *v.* Orne, 37 Ill. 186; Mussey *v.* Rayner, 22 Pick. 223; Peck *v.* Barney, 13 Vt. 93; Milroy *v.* Quinn, 69 Ind. 406; Taylor *v.* Shouse, 73 Mo. 361; Beakes *v.* Du Cunha, 126 N. Y. 293; Hasselman *v.* Japanese, etc., Co., 2 Ind. App. 180, S. C. 27 N. E. R. 718. As to requisites and form of notice, see Powell *v.* Chicago, etc., Co., 22 Ill. App. 409.

[2] Fisk *v.* Stone, 6 Dak. 35; Obermann Brewing Co. *v.* Ohlerking, 33 Ill. App. 26; Wright *v.* Griffith, 121 Ind. 478, S. C. 6 Lawy. R. Anno. 639; Dover Stamping Co. *v.* Noyes, 151 Mass. 342, S. C. 24 N. E. R. 53; Mathews *v.* Phelp, 61 Mich. 327, S. C. 1 Am. St. R. 581; Loomis Institute *v.* Hurd, 57 Conn. 435, S. C. 18 Atl. R. 669; Carroll County Savings Bank *v.* Strother, 28 So. Car. 504, S. C. 6 S. E. R. 313; Nading *v.* McGregor, 121 Ind. 465, S. C. 6 Lawy. R. Anno. 686; Hess *v.* Powell, 29 Mo. App. 411; Klosterman *v.* Olcott, 25 Neb. 382, S. C. 41 N. W. R. 251; Hungerford *v.* O'Brien, 37 Minn. 306, S. C. 34 N. W. R. 161.

[3] Barnes *v.* Mowry, 129 Ind. 568; Harris *v.* Newell, 42 Wis. 687; Kaufman *v.* Wilson, 29 Ind. 504; Rice *v.* Simpson, 9 Heisk. 809; Baker *v.* Kellogg, 29 Ohio St. 663; Bates *v.* State Bank, 2 Eng. (Ark.) 394; Savage *v.* Carleton, 33 Ala. 443; Bethune *v.* Dozier, 10 Ga. 235; Harriman *v.* Egbert, 36 Iowa, 270; Christy *v.* Horne, 24 Mo. 242; Lawson *v.* Buckley, 49 Hun, 329.

[4] 3 Chitty Gen. Pr., 434.

[5] Pulling on Attorneys, 191.

of counsel should, therefore, always be directed to obtaining the best evidence that the case in its nature affords; and, as all written instruments speak for themselves, they constitute the best evidence. When these documents are in the hands of the adverse party, notice to produce them must be given in order to let in secondary evidence.[1] The notice must be framed with care, and should inform the party to whom it is addressed as to what is required, and, for this reason, the document should be accurately described.[2] If the documents are in the possession of a third person a subpœna *duces tecum* should be seasonably issued. If the documents are lost, then proof of a diligent and an unsuccessful search in the proper place must be made in order to open the way for the introduction of secondary evidence.[3]

§ 329. **Effect of neglecting to take precautionary measures.** —The matters referred to are plain enough when mentioned, but they can not be overlooked without involving the lawyer and his client in difficulties that can not be surmounted. A neglect in performing the duty of ascertaining the facts, and the evidence by which they may be legally proved, will subject the advocate, not only to severe censure, but may cost him damages. It has more than once happened that words of stinging rebuke have fallen from great judges upon attorneys who have failed in their duty.[4] But it is not the fear of censure or of pecuniary loss that should influence the advocate; he should be moved by far higher motives to do his duty.

§ 330. **Arrangements for trial — Depositions.** — Arrangements for trial involve the performance of various duties. These duties need not be performed by the advocate himself,

[1] Grimes *v.* Fall, 15 Cal. 63; Anderson Bridge Co. *v.* Applegate, 13 Ind. 339; Whitman *v.* Weller, 39 Ind. 515; Farmers', etc., Bank *v.* Lonergan, 21 Mo. 46; Potier *v.* Barclay, 15 Ala. 439; United States *v.* Winchester, 2 McLean (U. S.), 135.

[2] 3 Chitty Gen. Pr., 834; *Ex parte* Jaynes, 70 Cal. 638.

[3] Kearney *v.* The Mayor, 92 N. Y. 617; Simpson *v.* Dall, 3 Wall. (U. S.) 460, 475; Anglo-Am., etc., Co. *v.* Cannon, 31 Fed. R. 313; Thompson *v.* Thompson, 9 Ind. 323.

[4] Thwaites *v.* Mackerson, 3 C. & P. 341; 2 Chitty Gen. Pr., 22, note.

but it is his duty to direct and control their performance. The time for trial must be fixed so that reasonable notice can be given parties and witnesses. If the personal attendance of witnesses can not be enforced by the process of the court, depositions must be taken, and notices to take them must be prepared and served as the law requires. The advocate should see to it that the proper method of examination is pursued in taking the testimony of the absent witnesses, and he can not safely intrust the examination to a strange and uninstructed counsel. It is often necessary to examine in advance depositions taken by the adverse party, for the purpose of ascertaining whether there are valid objections to them, and it is always prudent to examine them for the purpose of gaining information of the adversary's line of action. If, from any cause, there is reason to fear that the testimony of a witness may be lost, his deposition, *de bene esse*, should be promptly secured.

§ 331. **Witnesses and subpœnas.**—Directions to issue subpœnas for witnesses should be given in time to secure due service. There is one safe rule on this point, and that is, give the directions in writing in every instance. Issue subpœnas in every case, and do not trust to the oral promises of witnesses that they will be in attendance. Provide the means of compelling attendance by causing proper process to be served, and the tender of fees to be made in cases where it is required. Where documents or papers in the hands of a witness are needed, it is well to be sure that the subpœna fairly describes them. Write in full the names and residences of witnesses. Ascertain at the very earliest practicable moment what witnesses the adverse party will call, and obtain a knowledge of their business, their reputation and their character. If their reputation is vulnerable, prepare to assail it by witnesses; but, although this advice is somewhat aside from the present topic, keep in mind this one thing: Do not make an assault upon the reputation of any witness unless it is deserved, and your assault is strong enough to make a decided impression.

§ 332. **Ascertaining particulars of adversary's claim.**—There are very few cases in which it is not important to ascertain the particulars of the claim against which the advocate is required to defend.[1] Whether the claim is asserted by complaint or declaration, or by way of answer or counter-claim, it can be encountered with better hope of success if the particulars of it are known. A pleading dealing only in general terms may contain hidden places that, like the thickets of the forest, may serve as places of ambush. Where there is doubt or uncertainty the safe course is to clear the way by compelling, whenever it can be done, a display of all the particulars of the claim. This brings them into full view, and the contest is waged against a known force upon an open plain, and not in places where ambushes may be laid and new forces called into action. A fabricated claim will not often stand the test of specification. It is a sort of dissection that clears away the coloring and reveals the rottenness of the skeleton. If the statements of an adversary's pleading are vague and uncertain, the true course is to move to make them certain and specific. If the claim is one which can be particularized there should be a demand for a bill of particulars.

§ 333. **Setting forth particulars of claim.**—In setting forth the particulars of a claim it is impolitic to place too great a value upon the items. Cases have been laughed out of court by claims so large as to seem ridiculous. A fair and just estimate of the value of each item gives an honest appearance to the claim; while an extravagant estimate gives it an appearance of a fraudulent fabrication. Of course, the value may somewhat exceed the amount likely to be proved, but the excess should not be very great. An honest claim, based on substantial facts, is not, as the jury will quickly see, likely to be an extravagant one. If the evidence falls far short of proving the amount claimed the jury will not be slow to conclude that the client who asks the enforcement of an exaggerated claim is, if not positively dishonest, so unscrupulous as to be

[1] "All light is valuable on a dark path." De Quincey.

entitled to scant favor. An exaggerated claim arouses a feeling of distrust that needs but a little thing to enlarge it into a feeling of resentment.

§ 334. **Final consultation with client.**—When the time for trial is close at hand listen again to your client's story. Listen with patience, that no fact may escape you. Quintilian truly says: "There is not so much inconvenience in listening to superfluous matters as to be ignorant of such things as are necessary."[1] Patience was esteemed by the ancients as a necessary quality in an advocate. "And, indeed," as the French advocates teach, "why should not a person who sees his fortune or his honor in peril have a right to be heard in detail, so that nothing may be forgotten in the instructions?"[2] The veteran English attorney, Joseph Chitty, viewing the question with less of sentiment and more of cold business sagacity than the French and Roman advocates, insists, with almost equal earnestness, upon a consultation with the client when the time for trial closely approaches. This final consultation will, if the advocate is mindful of his duty, do more than refresh his memory. It will quicken his interest in his client's cause, and arouse his mental powers. If he be of the stuff of which great advocates are made, the near approach of the conflict will put a spirit into him that will give him strength to quit himself as a man, if it does not insure success. If, with the battle not "afar off," he hears his client's story coldly and with indifference, he is not well equipped for the encounter. Doubtless, the keen thrusts of the conflict will excite him to determined action, but, nevertheless, he will not be so strong as he

[1] Quintilian Inst., Book XII., Chap. viii. "He not only hears but examines his client and pinchecks the cause where he fears it is foundered." Bishop Collyer. In all consultations with the client allowance is to be made for the influence of passions or of self interest upon his judgment. Said the Puritan Solicitor, General John Cooke, "The client I look upon as a sick man, distempered, passionate, willful, and extremely in love with his own cause whatever it be, and many times the best advice to a resolute client is but as a good lesson to a lute out of tune—the affections pre-engaged draw away the judgment."

[2] History of the French Bar, 160.

would be if he had with zeal and spirit taken up arms for his client before the contest opened.

§ 335. **Notes of evidence.**—It is while the mind is warmed with the client's story, and stirred by the thought of the contest so soon to be fought in the forum, that the notes needed for the conduct of the trial should be put on paper. "There is," says M. Bautain, speaking of a kindred subject, "always life in this first rush, and care should be taken not to check its impetus or cool its ardor."[1] It is neither necessary nor expedient, however, to put down in full all the facts, much less the evidence; that work ought to be done at an earlier stage of the case. What is needed for use in the course of the trial is a collection of hints or suggestions. Too much committed to writing will do harm. No man can go through a contest where every step must be watched with vigilance, every advantage seized and every danger guarded, with credit to himself or justice to his client, if he follows the written pages previously prepared. One who is embarrassed by his notes can not thrust or parry like one whose mind is bent upon the movements of the contest. The paper needed for the purpose of conducting the trial is a mere skeleton. It is what M. Bautain calls "a dry bone frame." Each sentence must have a meaning, and must convey it quick as the flash of thought to its author. He must know without conscious effort what each proposition means. He must be able to determine the length and breadth of every statement even more rapidly and unerringly than the mind determines the size and distance of objects perceived by the eyes. The effort expended in catching the import of words contained in the skeleton of a brief is lost to the actual work of the contest.

§ 336. **Trial briefs.**—It will not do to take as models for the purpose of which we are speaking the briefs of English attorneys prepared for English barristers. It is wise to prepare such a brief after the preliminary examination, and in the

[1] Art of Extempore Speaking, 197.

preparation of such briefs the English authors are excellent instructors. Much valuable advice is given by Mr. Chitty and Mr. Warren which the tyro can study with profit and the experienced advocate recur to with benefit.[1] But the brief prepared immediately after the preliminary examination should be laid aside when the trial opens. The brief needed for the trial, as compared to such as goes into the hands of the barristers, is as a fleshless skeleton to a body clothed in full flesh. The skeleton brief should contain the name of each witness, with a statement annexed to it suggesting in the shortest possible way the subject on which he will give testimony, and a statement, as short as it can be made and yet be intelligible, of the leading points of the case. It should be a condensation of the first brief, trimming it down to the very bones.

§ 337. **Development of the theory.**—The trial is the development of the theory. The facts should move before the jury in an orderly and an unbroken procession; not in a crowded and straggling mass. The line of movement should be such as to make it appear that facts follow facts and inferences emerge from inferences as if they were the natural sequence of what had gone before. Naturalness is secured by the art of the advocate in making each step follow in succession as the steps follow in the processes of nature. The work of the advocate resembles that of the artist who puts on canvas the pictures of a panorama. The canvas as it is unrolled exhibits the pictures which dwelt in the brain of the painter before his brush gave them visible form; so the theory of the advocate, as it is unfolded before the jury, gives visible form to the preconceived images of his brain. Their work is not unlike, differing chiefly in this: The painter's brush places his images before the physical vision, the advocate's work places them before the mental vision. Thus differing, they closely resemble in this: A deviation from naturalness blemishes and disfigures the work of both. The closer the line of natural movement can

[1] 3 Chitty's Gen. Pr., 847; Warren's Duties of Attorneys, 178.

be followed, the stronger the presentation of the case. What enables the advocate to keep to this line is of benefit; what carries him from it is hurtful. If the written guide prepared for the trial is overloaded with particulars, branching from the main line into by-ways, it will do harm. If, however, it follows the line without confusion, and points out the way, it will do good. The great purpose of the skeleton brief is to keep the mind of the advocate to the line his theory has marked out as the way through the case. If the figure be not too bold, it may be said that his skeleton should be a chart to steer by, not a compendium of rules on navigation.

§ 338. **Witnesses should be present — Depositions.** — The testimony of a witness present in court, all other things being equal, unquestionably makes a much stronger impression than does testimony communicated in the form of a deposition. Sight and hearing combine, and the attention is much more thoroughly aroused than it is when the testimony is read from a paper. It is only where the attendance of an important witness can not possibly be secured that his deposition should be substituted for his oral testimony. Testimony in the form of a deposition is competent in a proper case, and it would probably be error to instruct, as matter of law, that such testimony is of less weight than that delivered from the witness-stand by the witness himself; but, nevertheless, testimony in the form of a deposition, as experience abundantly proves, will not go so deep in the mind, nor remain so firmly in memory, as that which is given by the witness in the sight and hearing of the jury.[1] In proof of this, if proof be needed, it is only necessary to instance the drama, for no one can doubt that the sight of the actors, as the play is developed on the stage, intensifies the power of the words they speak. Another reason why depositions should not be used when the presence of the wit-

[1] Carver *v.* Louthain, 38 Ind. 530; Millner *v.* Eglin, 64 Ind. 197; Starkie's Ev. (Sharswood's ed.), 767; 3 Bacon's Abridg., 560; Institutes of Hindu Law, Chap. 8; Ram on Facts, 38. "Things seen are mightier than things heard." Tennyson.

ness can be secured is that many things are brought to mind, as the contest warms the mental powers to increased activity, and are seen to be important, which were either not thought of, or the importance of which was not perceived, when preparing interrogatories in the quiet of the office.

§ 339. **Care required in taking precautionary measures.**— Resources ought not only to be known, but to be at command, before the fight is on.[1] A long look ahead, as long as sagacity and study will enable one to take, and a careful estimate of what is to be done and what is required to do it, are precautions which the prudent advocate never omits. The man who does not begin to be in earnest in his work until the trial is at hand will owe more to fortune than to merit if he is not soundly whipped. No great result can surely be accomplished if precautionary measures are not taken in good season. As much care is required in precautionary measures, although neither so much ability nor so much work is required, as in conducting the trial. The advocate must be both quartermaster and general, for he must secure the materials of forensic warfare as well as make them weapons of attack or of defense. If he has guns without percussion caps he might as well have none at all.

[1] "Above all, a perfect understanding of these points, in regard to which a false step taken in court may be ruinous, should be most anxiously sought after." Law Magazine.

CHAPTER X.

BRINGING THE ACTION—PROCESS.

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§ 340. **The ancient practice.**—The old common law mode of commencing an action at law was by suing out what was called an original writ. This writ closely resembled the writ known in modern procedure as the alternative writ of mandamus. In form it was a duly authenticated letter addressed to the sheriff commanding him to make due service upon the defendant, and containing a concise statement of the nature of the plaintiff's demand. Considerable strictness was required in stating the claim. Deviations from the rule prescribing the requisites of the writ that courts would now regard as utterly immaterial were in the early years of the law held fatal to the plaintiff's case, and a variance between the writ and the declaration was

sufficient to put the plaintiff out of court.[1] Prior to the statute enacted during the reign of Queen Anne suits in equity were commenced by suing out of the court of chancery a subpœna, but from that time until the change to the present system the practice was to file the bill, and upon the filing of the bill, and in some jurisdictions a *precipe* for a writ, the subpœna issued.

§ 341. **The modern practice.**—The original writ of the common law and the subpœna of chancery have in modern practice been superseded by a writ of summons, although the term "subpœna" is still applied to the writ issued by a court of chancery. Under the system which prevails in almost all of the States, as well as in the English dominions, the writ which brings a defendant into court is a summons requiring him to appear to the complaint, petition, declaration or bill of the plaintiff.[2] The strictness of the early decisions has given way to liberal rules and the courts are slow to sustain an attack upon a summons. As we shall hereafter see, a summons will be held sufficient unless the defect is a very material one.

§ 342. **Necessity for notice—Due process of law.**—The right to notice is a constitutional one. Where there is no notice there can be no valid judgment unless the party entitled to notice has expressly or impliedly waived his right. It is the notice that gives the defendant "his day in court."[1] That he

[1] Lloyd *v.* Williams, 2 Blk. R. 722; The Weavers Co. *v.* Forrest, 2 Str. 1232; Canning *v.* Davis, 4 Burr. 2417; Duvall *v.* Craig, 2 Wheat. 45; Cole *v.* Peniwell, 5 Blackf. 175.

[2] The term "process" is often applied to all writs, original, mesne and final, but some of the courts hold that the term does not embrace a summons or the writ which brings the defendant into court. Gowdy *v.* Sanders, 88 Ky. 346, 11 S. W. R. 82; Sprague *v.* Birchard, 1 Wis. 457; Comet Consolidated Mining Co. *v.* Frost, 15 Colo. 310, 25 Pac. R. 506; Fitzpatrick *v.* New Orleans, 27 La. Ann. 457; Hanna *v.* Russell, 12 Minn. 80; Gilmer *v.* Bird, 15 Fla. 410; Bailey *v.* Williams, 6 Ore. 71; Whitney *v.* Blackburn, 17 Ore. 564, S. C. 11 Am. St. R. 857. See, generally, State *v.* Ferguson, 31 N. J. L. 283; Arnold *v.* Chapman, 13 R. I. 586; Dwight *v.* Merritt, 18 Blatchf. 305; Taylor *v.* Henry, 2 Pick. 397; Kennard *v.* Louisiana, 92 U. S. 480; Falvey *v.* Jones, 80 Ga. 130; Drexel *v.* Miller, 49 Pa. St. 246; People *v.* Nevins, 1 Hill, 154; Wilson *v.* St. Louis, etc., R'y Co., 108 Mo. 588, S. C. 32 Am. St. Rep. 624.

should have such a day the common law requires,[1] and the Federal and State constitutions have placed it beyond the power of the legislative department to take away this common law right.[2] The true doctrine is that where there is no notice and no waiver by express agreement or by conduct there is not due process of law, and where there is not due process of law there can be no valid judgment.[3]

§ 343. **Writ or notice must be authorized by law.**—The writ or notice which brings a defendant into court and gives the tribunal jurisdiction of the person must be authorized by law. If there is no law authorizing or providing for notice and no appearance or waiver the proceedings will be absolutely

[1] "It is obviously a principle of natural justice," says Mr. Chitty, "and it is consequently a maxim in our municipal law, that no one should be condemned unheard, and hence the necessity for process to be in general actually served on a defendant, thereby summoning him or warning or compelling him to appear in court to hear the complaint against him. And to such an extent was this maxim carried in our ancient law, that a plaintiff could not declare or proceed in an action before the defendant had actually appeared in court to answer the plaintiff." 3 Chitty's Gen. Prac., 141. The learned author advises the student to read the opinion of Bayley, J., in Williams *v.* Lord Bagot, 3 B & C. 772. This principle was long ago embodied in the old maxim that "no man's cause should be heard where he is not given notice, nor any man condemned unheard and unsummoned." Coke says that "he who decides anything, one party being unheard, though he decide rightly, does wrong." See, generally, Eskridge *v.* Jones, 1 Smed. & M. (Miss.) 595; Flowers *v.* Foreman, 23 How. (U. S.) 132.

[2] Stuart *v.* Palmer, 74 N.Y. 183; People *v.* O'Brien, 111 N. Y. 1, S. C. 2 Lawyers' R. Anno. 255; Campbell *v.* Campbell, 63 Ill. 462; Happy *v.* Mosher, 48 N.Y. 313; Kennard *v.* Louisiana, 92 U. S. 480; Rowan *v.* State, 30 Wis. 129; Ziegler *v.* South. & North. Ala. R. R. Co., 58 Ala. 494; Johnson *v.* Joliet, 23 Ill. 202; State *v.* Fond du Lac, 42 Wis. 287; Seifert *v.* Brooks, 34 Wis. 443; Whiteford Tp. *v.* Probate Judge, 53 Mich. 130; Kuntz *v.* Sumption, 117 Ind. 1; Kingston *v.* Towle, 48 N. H. 57; Holliday *v.* Swailes, 1 Scam. (Ill.) 515; Bissell *v.* Briggs, 9 Mass. 462.

[3] Pennoyer *v.* Neff, 95 U. S. 714; *In re* Hatch, 43 N. Y. Sup. Ct. 89; South Platte, etc., Co. *v.* Buffalo, 7 Neb. 253; Hutson *v.* Woodbridge, etc., 79 Cal. 90, 16 Pac. R. 549; Pryor *v.* Downey, 50 Cal. 388; Springer *v.* United States, 102 U. S. 586; County of San Mateo *v.* Southern Pacific Co., 8 Am. & Eng. R. R. Cases, 1; Brown *v.* Board, etc., 50 Miss. 468; Westervelt *v.* Gregg, 12 N. Y. 202; Camp *v.* Rogers, 44 Conn. 291; Bartlett *v.* Wilson, 59 Vt. 23, S. C. 8 Atl. R. 321; Davidson *v.* New Orleans, 96 U. S. 97; Campbell *v.* Dwiggins, 83 Ind. 473; Bertholf *v.* O'Reilly, 74 N.Y. 59; Bradley *v.* Fisher, 13 Wall. 335; *Ex parte* Robinson, 19 Wall. 505.

void.[1] A statute conferring upon a tribunal power to take or finally dispose of the property of an individual without notice or some provision giving him an opportunity to be heard is unconstitutional.[2] And the fact that the party actually has notice of the proceeding will not cure the defect in the statute.[3]

§ 344. **Power of the legislature to prescribe what the notice shall be.**—The legislature has a wide discretion in regard to what the notice of a suit or action shall be and how and by whom the notice shall be served.[4] While it is well agreed that there must be some notice, yet it is not easy to extract from the decisions any rule for determining the limits of the legislative power over this subject. It seems safe to say that the form of the notice and the time and manner of service are questions for legislative determination, subject only to the limitation that the notice must be of such a nature and so timely served as to give the defendant a reasonable opportunity to be heard. We suppose that a statute providing for a notice or summons so clearly insufficient as to deprive the defendant of the opportunity to be heard in due course of law would be adjudged void because antagonistic to the fundamental rule which secures to every citizen his day in court.[5]

[1] See authorities cited in the next two notes below. In a case in which unauthorized publication of notice was made, the Supreme Court of the United States said: "There is an obvious distinction in reason between this case and the case where there has been personal service of irregular or erroneous process. In that case the party has notice in part, and may, if he will, appear and object to or waive the irregularity; in this, the publication being unauthorized, is not even constructive notice; and, unless the proceedings are considered as void, the injured party may be remediless." Hollingsworth *v.* Barbour, 4 Peters (U. S.), 466, 476.

[2] Stuart *v.* Palmer, 74 N. Y. 183; Garvin *v.* Daussman, 114 Ind. 429; Campbell *v.* Dwiggins, 83 Ind. 473; Whiteford Tp. *v.* Probate Judge, 53 Mich. 130; Brown *v.* City of Denver, 7 Col. 305; City of Philadelphia *v.* Miller, 49 Pa. St. 440; Overing *v.* Foote, 65 N. Y. 263; Johnson *v.* Joliet, etc., R. R. Co., 23 Ill. 124; Santa Clara *v.* So. Pac. R. R. Co., 13 Am. & Eng. R. R. Cas. 182.

[3] Kuntz *v.* Sumption, 117 Ind. 1.

[4] Walker *v.* Boston, etc., Co., 3 Cush. 1; Salem *v.* Eastern, etc., Co., 98 Mass. 431; Mason *v.* Messenger, 17 Iowa, 261; Matter of the Village of Middletown, 82 N. Y. 196.

[5] The essential elements of a writ of summons, as given by Mr. Chitty, are in substance these: 1. That it should

§ 345. **Defective process.**—If there is a writ issued under a law authorizing it the judgment will not be void although the defect may be so serious as to render the writ ineffective as against a direct and seasonable attack. It requires, according to the rule which prevails in nearly all of the States, errors or omissions of a material nature to overthrow a summons, and errors which would be fatal in a direct attack made at the proper time may be entirely destitute of force in a collateral assault. There is an essential difference between overthrowing judgments by a collateral proceeding and reversing them on appeal or annulling them by some other direct proceeding.

§ 346. **Direct and collateral attacks.**—The reports contain cases wherein it appears that attorneys were led into serious error by the failure to discriminate between direct and collateral attacks upon judgments so that it seems appropriate, if not necessary, to refer to the difference between direct and collateral attacks.[1] If there is any notice or process purporting to be issued pursuant to law and there is a law authorizing such notice or process the judgment will repel a collateral assault although the process may be defective.[2] The cases go very far in sustaining judgments against collateral attacks, and a writ or notice, if it professes to conform to the law and does in some measure do what it professes, will uphold a judgment as against a collateral attack, although it might be radically defective upon a direct attack.[3] "The objects to be ac-

explicitly inform the defendant in what court or office he should enter his appearance or put in bail. 2. That it should be served upon him a sufficient time to enable him without inconvenient hurry to so appear, or, according to modern practice, to secure an attorney. 3. That it should give the defendant reasonable information of the nature and extent of the plaintiff's claim. 3 Chitty Gen. Prac., 143.

[1] See note to Morrill *v.* Morrill, 23 Am. St. R. 95, 104, S. C. 12 Am. & Eng. Encyc. of Law, 147j, *et seq.*; note to Hahn *v.* Kelly, 94 Am. Dec. 742, 762.

[2] Van Fleet's Collateral Attack, § 329. There is a clear and well defined distinction between a defective notice and an absolute want of notice.

[3] Jackson *v.* State, 104 Ind. 516; Essig *v.* Lower, 120 Ind. 239; Quarl *v.* Abbett, 102 Ind. 233; Brown *v.* Goble, 97 Ind. 86; Muncey *v.* Joest, 74 Ind. 409; Hume *v.* Conduitt, 76 Ind. 598; Kleyla *v.* Haskett, 112 Ind. 515, S. C. 14 N. E. R. 387; Hackett *v.*

complished by a process," says Mr. Freeman, "are to advise the defendant that an action has been commenced against him by plaintiff, and warn him that he must appear within a time and at a place named and make such defense as he has, and in default of his so doing, that judgment against him will be applied for or taken in a sum designated, or for relief specified. If the summons actually issued accomplishes these purposes, it should be held sufficient to confer jurisdiction, though it may be irregular in not containing other statements required by the statute."[1] This is, perhaps, as correct a statement of the general rule as can be made; yet, as will hereafter be shown, a summons defective in some of these particulars, may be sufficient to support a judgment as against a collateral attack. Where a court has jurisdiction of the subject-matter and it is necessary to determine whether facts essential to jurisdiction exist, a judgment that they do exist is generally conclusive as against a collateral attack.[2] The conclusion of the court upon a matter which, by law, it was authorized to determine, may be erroneous, but it can not be void.[3] It fol-

State, 113 Ind. 532, S. C. 15 N. E. R. 799; Bonsell *v.* Isett, 14 Iowa, 309; Betts *v.* Baxter, 58 Miss. 334; Isaacs *v.* Price, 2 Dill, 347; Hendrick *v.* Whittemore, 105 Mass. 23; Cook *v.* Darling, 18 Pick. (Mass.) 393; McLain *v.* Duncan, 57 Ark. 49, S. C. 20 S. W. R. 597; Paine *v.* Mooreland, 15 Ohio, 435; Denman *v.* McGuire, 101 N. Y. 161; Sheldon *v.* Wright, 5 N. Y. 497; Hobson *v.* Ewan, 62 Ill. 146; Delaney *v.* Gault, 30 Pa. St. 63; People *v.* Hagar, 52 Cal. 171. "If there be a notice or publication, or whatever the law requires in reference to persons or other matters, its sufficiency can not be questioned collaterally." Morrow *v.* Weed, 4 Iowa, 77. See, also, Ballinger *v.* Tarbell, 16 Iowa, 491, S. C. 85 Am. Dec. 527; Shawhan *v.* Loffer, 24 Iowa, 217.

[1] 1 Freeman on Judgments, 215, § 126.

[2] Cooper *v.* Sunderland, 3 Clarke (Iowa), 114; Riley *v.* Waugh, 8 Cush. 220; Henderson *v.* Brown, 1 Caines (N. Y.), 92; Vail *v.* Owen, 19 Barb. (N. Y.) 22; Sheldon *v.* Wright, 5 N. Y. 497; Youngman *v.* Elmira, etc., R. R. Co., 65 Pa. St. 278; Grignon's Lessee *v.* Astor, 2 How. (U. S.) 319; Evansville, etc., R. R. Co. *v.* City of Evansville, 15 Ind. 395; Forsythe *v.* Kreuter, 100 Ind. 27; Million *v.* Board, 89 Ind. 5, 14; Fischer *v.* Holmes, 123 Ind. 525; Young *v.* Wells, 97 Ind. 410; Morrill *v.* Morrill, 20 Ore. 96, S. C. 23 Am. St. R. 95, and note; Wilkerson *v.* Schoonmaker, 77 Texas, 615, S. C. 19 Am. St. R. 803, and note; Ela *v.* Smith, 5 Gray, 121, S. C. 66 Am. Dec. 356; Coloma *v.* Eaves, 92 U. S. 484; Spaulding *v.* Homestead Ass'n, 87 Cal. 40; Goodwin *v.* Sims, 86 Ala. 102, S. C. 11 Am. St. R. 21.

[3] 1 Freeman on Judgments, § 126.

lows, therefore, that the judgment of the court, in such a case, even though erroneous, is conclusive, upon collateral attack, as to the sufficiency of the process. But a personal judgment, in proceedings *in personam*, is absolutely void and subject to a collateral attack, where the record shows that there was a total failure of notice and the defendant did not appear.[1] And this is true where a personal judgment is rendered against a non-resident and the only notice is by publication.[2]

§ 347. **How action is brought.**—The ordinary method of bringing an action is to file a complaint or petition with the clerk of the proper court and to cause a summons to be issued thereon. It is a maxim of jurisprudence as well as a constitutional provision that every one is entitled to his day in court, and that no one shall be condemned unheard.[3] Hence, the necessity for process notifying and summoning the defendant to appear in court to answer the complaint against him. The essential requisites of the summons and the manner and proof of its service are considered in the following sections.

§ 348. **Style of process.**—It is provided, either by constitu-

[1] Shaefer *v.* Gates, 2 B. Mon. (Ky.) 453, S. C. 38 Am. Dec. 164; Anderson *v.* Miller, 4 Blackf. 417; Allen *v.* Chadsey, 1 Ind. 399; Horner *v.* Doe, 1 Ind. 130, S. C. 48 Am. Dec. 355, and note; Pennoyer *v.* Neff, 95 U. S. 714; St. Clair *v.* Cox, 106 U. S. 350; Hollingsworth *v.* Barbour, 4 Pet. 466; Freeman *v.* Alderson, 119 U. S. 185; Eliot *v.* McCormack, 144 Mass. 10; Capehart *v.* Cunningham, 12 W. Va. 750; Anderson *v.* Hawhe, 115 Ill. 33; Tyler *v.* Peatt, 30 Mich. 63; Outhwite *v.* Porter, 13 Mich. 533; Anderson *v.* Brown, 9 Mo. 646; Hawley *v.* Heyman, 28 La. Ann. 347; North *v.* Moore, 8 Kan. 143; Moore *v.* Watkins, 1 Ark. 268; Great West. Min. Co. *v.* Woodman Min. Co., 12 Colo. 46, S. C. 20 Pac. R. 771; Duncan *v.* Gerdine, 59 Miss. 550.

[2] Renier *v.* Hurlbut, 81 Wis. 24, S. C. 29 Am. St. R. 850, and note; Fowler *v.* Lewis, 36 W. Va. 112, S. C. 14 S. E. R. 447; De Meli *v.* De Meli, 120 N. Y. 485, S. C. 17 Am. St. R. 652. See *post*, § 362. In Hardy *v.* Beaty, 84 Texas, 562, S. C. 31 Am. St. R. 80, it was held that an action of trespass to try title to an undivided interest in land was a proceeding *in rem*, but that a judgment *in personam* in such a proceeding against a non-resident defendant, served only by publication, for costs, was void and therefore subject to a collateral attack.

[3] Williams *v.* Lord Bagot, 3 B. & C. 772, 786; Eskridge *v.* Jones, 1 Smed. & M. (Miss.) 595; Holliday *v.* Swailes, 2 Ill. 515; Bissel *v.* Briggs, 9 Mass. 462; Bradley *v.* Fisher, 13 Wall. (U. S.) 335.

tion or statute, in many of the States, that all process shall run in the name of "The State" or "The People." But a defect or irregularity in this respect will not, according to the better reason and the weight of authority, make the proceedings absolutely void.[1] In an Arkansas case the process did not run in the name of any one, and it was held amendable after plea in abatement.[2] Some courts, however, have held that the failure of process to run in the name of the people, as required by the constitution, will prevent jurisdiction from attaching and render the proceedings void.[3]

§ 349. **Name and title of court.**—The summons should inform the defendant in what court or office he is required to appear.[4] But a misnomer of the court is not a material defect where there is but one court that could have been intended and the defendant could not have been misled thereby.[5] And where summons was served by leaving a copy at the last and usual place of residence of the defendant, it was held that the fact that the court was named as the "Common Pleas Court," instead of the "Court of Common Pleas," and that the seal was not copied did not render the summons insufficient even upon motion to quash it and set aside the service.[6]

§ 350. **Name of plaintiff.**—The defendant has a right to know at whose suit he is required to come into court, and the name of the plaintiff should, therefore, be stated in the summons. The character in which he sues, whether in person or in a representative capacity, should also be stated. And it

[1] Kahn *v.* Kuhn, 44 Ark. 404; Brewster *v.* Ludekins, 19 Cal. 162, 171; Hansford *v.* Hansford, 34 Mo. App. 262, 272; Carson *v.* Sheldon, 51 Mo. 436; Livingston *v.* Coe, 4 Neb. 379; Ilsley *v.* Harris, 10 Wis. 95; Mabbett *v.* Vick, 53 Wis. 158.

[2] Mitchell *v.* Conley, 13 Ark. 414.

[3] Wallahan *v.* Ingersoll, 117 Ill. 123, S. C. 7 N. E. R. 519; Yeager *v.* Groves, 78 Ky. 278. See, also, Forbes *v.* Darling, 94 Mich. 621, S. C. 54 N. W. R. 385.

[4] 3 Chitty's Gen. Pr., 143; Kitzmiller *v.* Kitchen, 24 Iowa, 163.

[5] New Eng. Mfg. Co. *v.* Starin, 60 Conn. 369, S. C. 22 Atl. R. 953; Ralph *v.* Lomer, 3 Wash. 401, S. C. 28 Pac. R. 760. See, also, Goudy *v.* Hall, 36 Ill. 313, S. C. 87 Am. Dec. 217; Bond *v.* Epley, 48 Iowa, 600; Hollingsworth *v.* State, 111 Ind. 289.

[6] Hughes *v.* Osborn, 42 Ind. 450.

was held at common law that if a writ names one plaintiff and the declaration two, the proceedings might be set aside for irregularity.[1] But a misnomer of the plaintiff, even when a corporation aggregate, has been held not to be a sufficient ground for nonsuit;[2] and under the liberal rules and statutes in most of the States, a defect in any of these particulars could doubtless be remedied by amendment, and would not make the writ absolutely void.[3]

§ 351. **Name of defendant.**—The name of the defendant and the character in which he is sued should also be stated in the summons.[4] It has been held that where the wrong name is stated in the summons the court has no jurisdiction unless the defendant appears;[5] but it is otherwise if the names are *idem sonans*,[6] and where the defendant is actually served a misnomer ought not to vitiate the summons and proceedings, at least as against a collateral attack.[7] If the name of the defendant is

[1] Rogers *v.* Jenkins, 1 Bos. & P. 383; Lewin *v.* Smith, 4 East, 589. So, where the writ is at the suit of a husband and the declaration is by the husband and wife. Reeks *v.* Robins, Barnes, 337.

[2] Mayor *v.* Bolton, 1 Bos. & P. 40; Boughton *v.* Frere, 3 Camp. 29; Gardner *v.* Walker, 3 Aust. 935.

[3] The judgment, in such a case, would not necessarily be void as against a collateral attack by the defendant. Kronski *v.* Mo. Pac. R. R. Co., 77 Mo. 362; McGaughey *v.* Woods, 106 Ind. 380, S. C. 7 N. E. R. 7. *Contra*, *Ex parte* Cheatham, 1 Eng. (Ark.) 531, S. C. 44 Am. Dec. 525.

[4] 3 Chitty's Gen. Pr., 166, 181, 256.

[5] Barnett *v.* Tayler, 30 Tex. 453; Moulton *v.* de ma Carty, 6 Rob. (N. Y. Sup.) 470; Fanning *v.* Krapfl, 61 Iowa, 417. See, also, Bendy *v.* Boyce, 37 Tex. 443; Anderson *v.* Brown, 16 Texas, 554; Bates *v.* State Bank, 7 Ark. 394, S. C. 46 Am. Dec. 293; Clark *v.* Gilmer, 28 Ala. 265.

[6] Miller *v.* Brenham, 68 N. Y. 83; Buchanan *v.* Roy, 2 Ohio St. 251; Robertson *v.* Winchester, 85 Tenn. 171, S. C. 1 S. W. R. 781. But see Kennedy *v.* Merriam, 70 Ill. 228.

[7] La Fayette Ins. Co. *v.* French, 18 How. (U. S.) 404; Bloomfield R. R. Co. *v.* Burress, 82 Ind. 83; Parry *v.* Woodson, 33 Mo. 347, S. C. 84 Am. Dec. 51; Hoffield *v.* Board, 33 Kan. 644, S. C. 7 Pac. R. 216; Lewis *v.* Grace, 44 Ala. 307; Burton *v.* Buckeye Ins. Co., 26 Ohio St. 467; Welch *v.* Hull, 73 Mich. 47, 40 N. W. R. 797. An alias summons against one of several defendants need not name those already served. Reed *v.* Boyd, 84 Ill. 66. A summons against "S., trustee of B. civil township" is not a writ against the township, and it is not bound to take notice of it. Vogel *v.* Brown Tp., 112 Ind. 299. But a summons against "trustee C. school township" is against the trustee in his official capacity, and the township must take notice. Cicero School Twp. *v.* The Chicago Nat. Bank, 127 Ind. 79.

unknown, that fact should be stated in the summons and he may be otherwise identified therein, or, under some statutes, a fictitious name may be used and the real name inserted when discovered.[1]

§ 352. **Nature and extent of plaintiff's claim.**—It is proper that information of the nature and extent of the plaintiff's claim should be given in the summons, or by indorsement thereon.[2] But "where a defendant is served with summons it is his duty to appear and ascertain the nature of the cause of action alleged against him, and he can not escape the consequences of his neglect to do this, upon the ground that the recital in the summons did not fully inform him of the nature of the cause of action, or correctly describe the relief sought."[3] So, where the statute provided that in a proceeding to establish a drain "notice of the pendency and prayer of the petition" should be given, it was held that "notice stating that the report of the viewers has been filed and will be heard," was sufficient as against a collateral attack.[4]

[1] Kellam *v.* Toms, 38 Wis. 592; Buchanan *v.* Roy, 2 Ohio St. 251; Bates on Pleading, 80. It has been held in Kentucky that a summons against "the unknown children" of a certain person is not a valid summons. Kellar *v.* Stanley, 86 Ky. 240, S. C. 5 S. W. R. 477. See, also, Sandford *v.* White, 56 N. Y. 359. In Fitzgerald *v.* Salentine, 10 Met. (Mass.) 436, it was said that a fictitious name might be used and that a misnomer would not render the proceeding void where there was service on the right party, but as the defendant had not been served at all, the judgment was held subject to collateral attack.

[2] Chitty's Gen. Pr. 143. And this may be necessary under a particular statute or rule of court. Sawyer *v.* Robertson, 11 Mont. 416, S. C. 28 Pac. Rep. 456; Schuttler *v.* King, 12 Mont. 149, 30 Pac. R. 25; Williamson *v.* Wardlaw, 40 Ga. 702; Leathers *v.* Morris, 101 N. Car. 184; United States *v.* Turner, 50 Fed. R. 734; Watson *v.* McCartney, 1 Neb. 131; Kinney's Pl. & Pr. (Iowa), §§ 147, 148; Mood *v.* Taylor, 12 Iowa, 71. But, although this is required in Nebraska, it is held that the failure to indorse the amount of plaintiff's demand on the summons is of no consequence unless the defendant fails to appear. Crowell *v.* Galloway, 3 Neb. 219.

[3] Freeman *v.* Paul, 105 Ind. 451, 452. See, also, Higley *v.* Pollock (Nev.), 27 Pac. R. 895; Behlow *v.* Shorb, 91 Cal. 141, S. C. 27 Pac. R. 546; Gulf, C. & S. F. R. R. Co. *v.* James, 48 Fed. R. 148; Ritter *v.* Offutt, 40 Md. 207; Chester & T. Coal & R. R. Co. *v.* Lickiss, 72 Ill. 521; Messervey *v.* Beckwith, 41 Ill. 452; Blair *v.* Wolf, 72 Iowa, 246, S. C. 33 N. W. R. 669.

[4] Montgomery *v.* Wasem, 116 Ind.

§ 353. **Date of summons and return.**—The defendant is entitled to know at what time he is required to appear, and the date at which the summons is returnable should, therefore, be stated therein.[1] If the writ is made returnable beyond the first term of court after it is issued it will be absolutely void,[2] and this has also been held to be the rule where the writ is made returnable to an impossible term of court.[3] But the fact that a wrong day in the term is named will not invalidate the summons where the statute makes all such writs returnable on the first day of the term, regardless of the time fixed in the writ.[4] So, where a summons was dated by mistake May 21, and made returnable April 21, after judgment, which was rendered May 4, it was held that it was not void as against a collateral attack.[5] And a similar ruling was made in another case, where the writ

343, S. C. 15 N. E. R. 795, and 19 N. E. R. 184.

[1] Lyon *v.* Vanatta, 35 Iowa, 521; Kitsmiller *v.* Kitchen, 24 Iowa, 163; Phinney *v.* Donahue, 67 Iowa, 192.

[2] Shirley *v.* Hagar, 3 Blackf. 225; Crocker *v.* Dunkin, 6 Blackf. 535; Carey *v.* Butler, 11 Ind. 391; Briggs *v.* Sneghan, 45 Ind. 14; Burk *v.* Barnard, 4 Johns. (N. Y.) 309; Atkinson *v.* Taylor, 2 Wils. 117; Reubel *v.* Preston, 5 East, 291; Shirley *v.* Wright, Salk. 700; Calhoun *v.* Webster, 2 Scam. (Ill.) 221; Hildreth *v.* Hough, 20 Ill. 331; Hocklander *v.* Hocklander, 73 Ill. 618; Kelly *v.* Gilman, 29 N. H. 385, S. C. 61 Am. Dec. 648; McAlpine *v.* Smith, 68 Me. 423. This was the rule at common law, and it is still the general rule in the absence of any statute to the contrary. In some of the States it is provided by statute that, although the summons would otherwise be returnable on the first day of the next term, it may be made returnable after a certain number of days, in the same term at which it is issued, by plaintiff's counsel indorsing the time upon the complaint.

[3] Lowrey *v.* Richmond & D. R. R. Co., 83 Ga. 504, 10 S. E. R. 123; Hoxie *v.* Payne, 41 Conn. 539; Holliday *v.* Cooper, 3 Mo. 286; Brown *v.* Simpson, 3 Stew. (Ala.) 331. But it has been held in Indiana that a summons is not void merely because it is made returnable in vacation. Ross *v.* Glass, 70 Ind. 391. Compare, however, Leigh *v.* Alpaugh, 24 N. J. L. 629. As to the rule where the day fixed for the return is *dies non*, see Gould *v.* Spencer, 5 Paige (N. Y.), 541; Kinney *v.* Emery, 37 N. J. Eq. 339; Ostertag *v.* Galbraith, 23 Neb. 730, and compare Kenworthy *v.* Peffiat, 4 B. & A. 288; Bell *v.* Austin, 13 Pick. (Mass.) 90; Sanders *v.* Rains, 10 Mo. 770.

[4] Riggsbee *v.* Bowler, 17 Ind. 167; Morgan *v.* Woods, 33 Ind. 23. See, also, Whitewater, etc., Canal Co. *v.* Henderson, 3 Ind. 3; Johnson *v.* Clark, 18 Kan. 157; Cross *v.* Wilson, 52 Ark. 312, S. C. 12 S. W. R. 576; De Tar *v.* Boone Co., 34 Iowa, 488; Hare *v.* Niblo, 4 Leigh. (Va.) 359.

[5] Chicago Dock and Canal Co. *v.* Kinzie, 93 Ill. 415, 431; Irions *v.* Keystone Mfg. Co., 61 Iowa, 406. Com-

was dated before the action was commenced.[1] So, where a judgment was rendered upon notice by publication before the notice had run for the full statutory period, it was held that the judgment, although erroneous, was not void, and that it was not subject to collateral attack.[2]

§ 354. Signature and seal.—The fact that a summons is signed, sealed and delivered in blank by the clerk to the plaintiff's attorney, who afterwards inserts the names of the parties, nature and extent of the claim, and date of issue and return, will not invalidate it.[3] At common law the writ was required to be tested by the chief justice or chief baron of the court from which it issued,[4] and in most of the States it must be signed by the clerk and issued under seal of the court.[5] Under a statute requiring the name of the plaintiff or his attorney to be subscribed to the summons, any signature which they may adopt, whether written, printed or lithographed, is sufficient.[6] And the fact that the summons, except the signature of the clerk, is in the writing of the plaintiff's attorney, will not ren-

pare Rice *v.* American National Bank (Col.), 31 Pac. R. 1024.

[1] Woodman *v.* Smith, 37 Me. 21; Fort *v.* Milligan, 21 N. Y. S. 145.

[2] Essig *v.* Lower, 120 Ind. 239. See, also, Hoose *v.* Sherrill, 16 Wend. (N. Y.) 33. But compare Brownfield *v.* Dyer, 7 Bush. (Ky.) 505; Bird *v.* Norquist, 46 Minn. 318, S. C. 48 N. W. R. 1132.

[3] Potter *v.* John Hutchinson Mfg. Co., 87 Mich. 59, S. C. 49 N. W. R. 517; Jewett *v.* Garrett, 47 Fed. R. 625; Miller *v.* Hall, 1 Spears, 1. So, where a constable or other person fills the blank. Hafner *v.* Irwin, 4 Ired. L. 529, 533; Baker *v.* Holmes, 27 Me. 153; Haskell *v.* Haven, 3 Pick. (Mass.) 404. Compare Adm'r of Whitcomb *v.* Cook, 39 Vt. 585; Ross *v.* Fuller, 12 Vt. 265, 270.

[4] 3 Chitty's Gen. Pr. 202, 257. See, also, 1 Sherin's Pl. & Pr. (Mich.) 3531; Howerter *v.* Kelly, 23 Mich. 337; Mason's Mass. Pr., § 25.

[5] See Dwight *v.* Merritt, 18 Blatchf. (U. S.) 305; 2 Poe's Pl. & Pr. 560; Mason's Mass. Pr., § 25. But in Colorado, Iowa and some other States, it need not be under seal, and may be signed by the plaintiff's attorney. Rand *v.* Pantagraph Stationery Co., 1 Col. App. 270, S. C. 28 Pac. R. 661; Kinney's Pl. & Pr. (Iowa), § 147. See, also, Whitney *v.* Blackburn, 17 Ore. 564, S. C. 11 Am. St. R. 857; Porter *v.* Vandercook, 11 Wis. 70.

[6] Herrick *v.* Morrill, 37 Minn. 250, S. C. 5 Am. State R. 841. See, also, Barnard *v.* Heydrick, 49 Barb. (N.Y.) 62; Mezchen *v.* More, 54 Wis. 214; Ligare *v.* California S. R. R. Co., 76 Cal. 610, S. C. 18 Pac. Rep. 777.

der it invalid.[1] Nor will the omission of a seal or the use of a wrong seal render it void as against a collateral attack.[2]

§ 355. **Amendments.**—There are many cases in which defects in a writ or return may be cured by amendment. Thus where the Christian name of the plaintiff is erroneously stated in the summons, the writ may be amended so as to state the name correctly as it appears in the complaint.[3] So, where the defendant is erroneously named, but has been properly served.[4] Defects and clerical mistakes in the *teste* of the writ,[5] in dates therein,[6] and various other irregularities of a similar nature[7] are amendable under the liberal rules and statutes in force in most jurisdictions. Indeed, it may be stated as a general rule, that a summons may be amended whenever no injury can result to any one from such amendment.[8] But where there is no

[1] Jewett *v.* Garrett, 47 Fed. R. 625.

[2] Strong *v.* Catlin, 3 Pinney, 121; Crane *v.* Blum, 56 Texas, 325; State *v.* Davis, 73 Ind. 359; Joyce *v.* Whitney, 57 Ind. 550; State *v.* Ennis, 74 Ind. 17; Krug *v.* Davis, 85 Ind. 309. See, also, Talcott *v.* Rozenberg, 3 Daly, 203, 207; Dominick *v.* Eacker, 3 Barb. 17; Gray *v.* Douglass, 81 Me. 427, S. C. 17 Atl. R. 320; Heighway *v.* Pendleton, 15 Ohio, 735; Rose *v.* Railroad Co., 47 Iowa. 420. But compare State *v.* Worley, 11 Ired. L. (N. Car.) 242.

[3] Haines *v.* Bottorff, 17 Ind. 348; State *v.* Hood, 6 Blackf. 260; Thurber-Whyland Co. *v.* Klittner, 16 N. Y. Supp. 828, S. C. 42 N. Y. S. R. 157. But it has been held that it can not be so amended as to substitute an entirely different plaintiff. Woodward *v.* Wons, 18 Ind. 296. Compare Gulf, C. & S. F. R. R. Co. *v.* James, 4 U. S. App. 19; Scudder *v.* Massengill, 88 Ga. 245, S. C. 14 S. E. R. 571, in which an entire change of name was permitted. See, also, Waterman *v.* Dockray, 79 Me. 149, S. C. 8 Atl. R. 685.

[4] Weaver *v.* Jackson, 8 Blackf. 5; Johnson *v.* Patterson, 59 Ind. 237; Shackman *v.* Little, 87 Ind. 181. See, also, Indigo Co. *v.* Ogilvy (Eng. Rep.), 2 Ch. Div. (1891) 31; Welch *v.* Hull, 73 Mich. 47, S. C. 40 N. W. R. 797; Frost *v.* Paine, 12 Me. 111; Cleveland *v.* Pollard, 37 Ala. 556; Phillips *v.* Evans, 64 Mo. 17.

[5] United States *v.* Turner, 50 Fed. R. 734.

[6] Richmond & D. R. R. Co. *v.* Benson, 86 Ga. 203, S. C. 12 S. E. R. 357; Kelly *v.* Harrison, 69 Miss. 856, S. C. 12 So. R. 261. Or in the date of the return. Kidd *v.* Daugherty, 59 Mich. 240; Snyder *v.* Schram, 59 How. Pr. (N. Y.) 404; Fisher *v.* Collins, 25 Ark. 97.

[7] Telford *v.* Coggins, 76 Ga. 683; Prentice *v.* Stefan, 72 Wis. 151, S. C. 39 N. W. R. 364; Jewett *v.* Garrett, 47 Fed. R. 625; Boyd *v.* Fitch, 71 Ind. 306; Hunter *v.* Burnsville Turnp. Co., 56 Ind. 213; State *v.* Davis, 73 Ind. 359; *In re* Soule, 46 Hun (N. Y.), 661; Messervey *v.* Beckwith, 41 Ill. 452.

[8] See Chamberlain *v.* Bittersohn, 48

process at all, no service and no waiver, there can, of course, be no amendment.[1] An officer may amend his return, so as to make it speak the truth, at any time before it is filed.[2] After it is filed, however, it becomes a record of the court,[3] and the officer can not amend it without the sanction of the court;[4] but the court may, and should, upon proper application and notice, permit it to be amended so as to speak the truth, especially where such amendment is necessary to support proceedings based upon the return.[5] In some cases it is held that notice to the defendant is unnecessary,[6] but the weight of authority seems to be in favor of the rule requiring notice.[7] Whether an amendment should be permitted or refused is largely a matter of discretion with the court.[8] And an officer

Fed. R. 42; Simcoke *v.* Frederick, 1 Ind. 54. In Glidden *v.* Philbrick, 56 Me. 222, it was held that an officer should not be permitted to amend his return where it would destroy the rights of a *bona fide* purchaser. See, also, Briggs *v.* Hogdon, 78 Me. 514.

[1] McGhee *v.* Gainesville, 78 Ga. 790, S. C. 3 S. E. R. 670.

[2] Watson *v.* Toms, 42 Mich. 561; Welsh *v.* Joy, 13 Pick. (Mass.) 477; Bates *v.* Willard, 10 Metc. (Mass.) 62; State *v.* Melton, 8 Mo. 417; Spoor *v.* Holland, 8 Wend. (N. Y.) 445; Murfree on Sheriffs, §§ 875-878.

[3] Rickards *v.* Ladd, 4 Pac. C. L. J. 52; Watkins *v.* Gayle, 4 Ala. 153.

[4] Watkins *v.* Gayle, 4 Ala. 153; Wilcox *v.* Moudy, 89 Ind. 232; Morrill *v.* Fitzgerald, 36 Texas, 275.

[5] Shenandoah Valley R. R. Co. *v.* Ashby, 86 Va. 232, S. C. 19 Am. St. R. 898; Mills *v.* Howland, 2 N. Dak. 30, S. C. 49 N.W. R. 413; Malone *v.* Samuel, 3 A. K. Marsh. (Ky.) 350, S. C. 13 Am. Dec. 172, and note, where many authorities are collected upon this entire subject. Bogue *v.* Prentis, 47 Mich. 124; De Armond *v.* Adams, 25 Ind. 455; New Albany & S. R. R. Co. *v.* Grooms, 9 Ind. 243; National Ins. Co. *v.* Chamber of Commerce, 69 Ill. 22; Kirkwood *v.* Reedy, 10 Kan. 453; Hart *v.* Adams, 7 Gray (Mass.), 581; Corby *v.* Burns, 36 Mo. 194. Compare Reinhart *v.* Lugo, 86 Cal. 395, and the well merited criticism of Mr. Freeman thereon, in the note to said case as reported in 21 Am. St. R. 52, 56.

[6] Morris *v.* Trustees, 15 Ill. 266; Kitchen *v.* Reinsky, 42 Mo. 427; Rickards *v.* Ladd, 4 Pac. C. L. J. 52.

[7] O'Connor *v.* Wilson, 57 Ill. 226; Barlow *v.* Standford, 82 Ill. 298; Coopwood *v.* Morgan, 34 Miss. 368; Williams *v.* Doe, 1 S. & M. 559; Freeman on Executions, § 358. See, also, Blodgett *v.* Schaffer, 94 Mo. 652, 7 S. W. R. 436.

[8] Jeffries *v.* Rudloff, 73 Iowa, 60, S. C. 5 Am. St. R. 654; Allison *v.* Thomas, 72 Cal. 562, S. C. 1 Am. St. R. 89; Shufeldt *v.* Barlass, 33 Neb. 785, 51 N. W. R. 134; Austin *v.* Jordan, 5 Texas, 130; Johnson *v.* Day, 17 Pick. (Mass.) 106; Sawyer *v.* Harmon, 136 Mass. 414; Foreman *v.* Carter, 9 Kan. 674; Pierce *v.* Strickland, 2 Story, 292; Scruggs *v.* Scruggs, 46 Mo. 271. Compare Jackson *v.* Ohio, etc., R. R. Co., 15 Ind. 192.

may be permitted to amend his return even after the expiration of his official term.[1] The return as amended, ordinarily at least, relates back to and takes the place of the original return.[2]

§ 356. **Service—By whom.**—A summons, being directed to a certain officer, usually a sheriff, constable or marshal, should be served by such officer or his deputy, unless the statute makes provision for service by some one else.[3] It is frequently provided by statute, however, that a third person may serve the summons and make proof of the service by affidavit.[4] But service of original process by a party to a suit upon his adversary is objectionable, as the law does not authorize a party to execute process in his own favor.[5] And where it is made by

[1] Dwiggins *v.* Cook, 71 Ind. 579; Jeffries *v.* Rudloff, 73 Iowa, 60, S. C. 5 Am. St. R. 654; Adams *v.* Robinson, 1 Pick. (Mass.) 461; Lake's Petition, 15 R. I. 628, S. C. 10 Atl. R. 653; Johnson *v.* Donnell, 15 Ill. 97; Miles *v.* Davis, 19 Mo. 408; Keen *v.* Briggs, 46 Me. 467; Bean *v.* Thompson, 19 N. H. 290; Palmer *v.* Thayer, 28 Conn. 237. *Contra*, Armstrong *v.* Easton, 1 B. Mon. (Ky.) 66; Jessup *v.* Gragg, 12 Ga. 261. But not without the order of the court. Beutell *v.* Oliver, 89 Ga. 246, 15 S. E. R. 307. See, also, Thatcher *v.* Miller, 13 Mass. 270; O'Conner *v.* Wilson, 57 Ill. 226, where the court refused to allow the amendment because of lapse of time. But, compare Gilman *v.* Stetson, 16 Me. 124; O'Brien *v.* Gaslin, 20 Neb. 347; Shenandoah Valley R. R. Co. *v.* Ashby, 86 Va. 232.

[2] Lake, Petitioner, 15 R. I. 628; Capehart *v.* Cunningham, 12 W. Va. 750; People *v.* Ames, 35 N. Y. 482, S. C. 91 Am. Dec. 64; Hill *v.* Cunningham, 25 Texas, 25.

[3] Schwabacker *v.* Reilly, 2 Dill. 127; Kyle *v.* Kyle, 55 Ind. 387; Grantier *v.* Rosecrance, 27 Wis. 488; Callaway *v.* Harrold, 61 Ga. 111; Rudd *v.* Thompson, 22 Ark. 363; Hickey *v.* Forristal, 49 Ill. 255. And a summons directed to a sheriff of one county can not, it has been held, be served by the deputy sheriff of another county. Branner *v.* Chapman, 11 Kan. 118. As to service by *de facto* officer, see Fowler *v.* Bebee, 9 Mass. 231, and compare Putnam *v.* Man, 3 Wend. (N. Y.) 202, S. C. 20 Am. Dec. 686.

[4] See New Albany & Salem R. R. Co. *v.* Grooms, 9 Ind. 243; Proctor *v.* Walker, 12 Ind. 660; Rev. St. Ind. '81, § 481; Coffee *v.* Gates, 28 Ark. 43; Peck *v.* Strauss, 33 Cal. 678; Myers *v.* Overton, 2 Abb. Pr. (N. Y.) 344. And it has been held that where the writ is directed to the wrong officer but served by the right one, the proceedings based thereon are not necessarily void. Ware *v.* Todd, 1 Ala. 199; Sawyer *v.* Price, 6 Ala. 285.

[5] Snydacker *v.* Brosse, 51 Ill. 357, S. C. 99 Am. Dec. 551; Hemmer *v.* Wolfer, 124 Ill. 435, S. C. 11 N. E. R. 885; Boykin *v.* Edwards, 21 Ala. 261; Morton *v.* Crane, 39 Mich. 526; Clark *v.* Patterson, 58 Vt. 676.

an officer it should, of course, be by the proper officer of the county in which it is made,[1] unless otherwise provided by statute.

§ 357. **Personal service.**—In the absence of any express statutory provision as to the manner and mode of service, personal service is generally essential.[2] So, if it appears from a reasonable construction of the statute that personal service is contemplated, no other can be substituted over the objection of the defendant properly made.[3] Strictly, personal service is service by reading and delivering the original or a copy of the summons, or by merely delivering such copy, to the defendant by the proper officer or person authorized to serve the writ, and showing the original, if demanded.[4] In a recent Nebraska case it was held that delivery by the sheriff of two copies of a summons against husband and wife to the husband alone, and the delivery of one of them by the husband to the wife, in the sight of the sheriff, did not constitute personal service on the wife.[5] But where a man, in order to avoid service of summons, dressed in his wife's clothes, and refused to take the writ in his hands, laying the summons on his shoulder was held a good and sufficient personal service.[6] Where, however, the person to be served was too drunk or too ill to understand what was done the service was held invalid.[7]

§ 358. **Service by leaving copy at place of residence.**—It is

[1] Wirtz *v.* Henry, 59 Ill. 109; First Nat. Bank *v.* Dwight, 85 Mich. 509; Ford *v.* Adams, 54 Ark. 137; Lillard *v.* Brannin (Ky.), 16 S. W. R. 349; Cresswell *v.* McCaig, 11 Neb. 222.

[2] Read *v.* French, 28 N.Y. 285; Rathburn *v.* Acker, 18 Barb. 393; Brydolf *v.* Wolf, 32 Iowa, 509; Wilson *v.* City of Trenton (N. J.), 16 L. R. A. 200, and note; Chicago & A. R. R. Co. *v.* Smith, 78 Ill. 96; St. Louis *v.* Goebel, 32 Mo. 295; Sleeper *v.* Free Baptist Ass'n, 58 N. H. 27.

[3] Bond *v.* Whitfield, 28 Ga. 537.

[4] See Simmons *v.* Gardiner, 6 R. I. 255; Smith *v.* Kerr, 49 Hun (N. Y.), 29; Goggs *v.* Huntingtower, 12 Mees. & W. 503; Hart *v.* Gray, 3 Sumn. (U. S.) 339; Wilson *v.* City of Trenton (N. J.), 16 L. R. A. 200, and note. Reading alone has been held sufficient under the Wisconsin statute. Green *v.* State, 56 Wis. 583.

[5] Holliday *v.* Brown, 50 N. W. R. 1042. To same effect is Williams *v.* Van Valkenburg, 16 How. Pr. (N. Y.) 144.

[6] Martin *v.* Raffin, 21 N. Y. S. 1043. See, also, Borden *v.* Borden, 63 Wis. 374; People *v.* Bernal, 43 Cal. 385.

[7] Murphy *v.* Loos, 104 Ill. 514; People *v.* Judge, 38 Mich. 310.

frequently provided that a summons may also be served by leaving a copy at the last or usual abode, or place of residence of the defendant. This is usually called substituted service,[1] although it is sometimes called personal service as distinguished from service by publication.[2] Under such a statute it is not sufficient to leave a copy at the defendant's place of business.[3] The phrase, "last or usual place of residence" has been construed as meaning the residence into which the defendant, while still a resident of the State, has moved in the State, last before the service of process.[4] If the defendant has established himself in business in another State and become a citizen thereof, with the intention of making such place his permanent residence and removing his family there when convenient, leaving a copy of a summons with a member of his family at his old residence is not a good service upon him, under a statute providing that a copy may be left with a member of the defendant's family at his usual place of residence.[5] It is sometimes provided that this kind of service can be resorted to only when the party to be served can not be found, so that personal service would be impracticable,[6] and in such cases the return should show that he could not be found.[7] In a case de-

[1] Chittenden *v.* Hobbs, 9 Iowa, 417.

[2] Dunkle *v.* Elston, 71 Ind. 585.

[3] Lambert *v.* Sample, 25 Ohio St. 336; Winchester *v.* Cox, 3 Green (Iowa), 575; McConkey *v.* McCraney, 71 Wis. 576; Hewitt *v.* Weatherby, 57 Mo. 276. See, also, Arnault *v.* St. Julien, 21 La. Ann. 630; Adams *v.* Abram, 38 Mich. 302; Kibbe *v.* Benson, 17 Wall. (U. S.) 624.

[4] Sturgis *v.* Fay, 16 Ind. 429. Although a person has disappeared from his home, but without expressing any intention not to return, process left with his wife at his usual place of abode, nine days after his disappearance, is sufficient to give the court jurisdiction. Botna Valley State Bank *v.* Silver City Bank (Iowa), 54 N. W. R. 472. As to boarding-house being place of abode, see Lee *v.* Macfee, 45 Minn. 33, and compare White *v.* Primm, 36 Ill. 416. See, generally, Earl *v.* McVeigh, 91 U. S. 503; Hyslop *v.* Hoppock, 5 Ben. (U. S.) 447; Harrison *v.* Farrington, 35 N. J. Eq. 4; Succession of McCalop, 10 La. Ann. 224; Laney *v.* Garbee, 105 Mo. 355.

[5] Schlawig *v.* De Peyster, 83 Ia. 323, S. C. 13 L. R. A. 785, S. C. 49 N. W. R. 843. See, also, Earl *v.* McVeigh, 91 U. S. 503; Piggott *v.* Snell, 59 Ill. 106; Wolff *v.* Shenandoah National Bank (Iowa), 50 N. W. R. 561.

[6] Davis *v.* Burt, 7 Iowa, 56; Chittenden *v.* Hobbs, 9 Iowa, 417; Trullenger *v.* Todd, 5 Ore. 36.

[7] Matteson *v.* Smith, 37 Wis. 333; Settlemier *v.* Sullivan, 97 U. S. 444.

cided by the Supreme Court of the United States the sheriff's return showed that the summons was served by delivering it to the wife of the defendant at his usual place of abode, but contained no statement that he could not be found. Judgment was rendered against him at the next term, reciting that "the defendant, although duly served with process, came not, but made default." A majority of the court held that no jurisdiction was acquired by such service, and that the judgment was void.[1] We are of the opinion, however, that this decision is unsound and contrary to the general rule governing collateral attacks.[2] Of course, if there is no provision made for any such service, and it is wholly unauthorized, a different rule would apply from that for which we here contend. In such a case there is not merely an irregularity in the service; there is no service at all, and, if the record shows that fact, it may well be held that a judgment based thereon is void and subject to collateral attack.[3] Many of the statutes not only provide that the summons shall be left at the defendant's last and usual place of residence or abode, but also that it must be left with some member of his family or some suitable person over a specified age. Such provisions should be carefully complied with, and the return should show all the necessary facts.[4]

[1] Settlemier *v.* Sullivan, 97 U. S. 444.

[2] This was a collateral attack upon a judgment and the lower court had expressly found that process was duly served. The only irregularity was that the return of the sheriff failed to show that the defendant could not be found. The presumption, even in the absence of an express finding, was that all necessary steps had been taken in order to acquire jurisdiction. It did not necessarily follow because the return was silent as to some of the steps that they had not been taken, and the court expressly found that they had been taken. It seems clear to us that the three dissenting judges were undoubtedly right in holding that there could be no successful collateral attack in such a case. See Taylor *v.* Webb, 54 Miss. 36; Bonsall *v.* Isett, 14 Iowa, 309; Freeman *v.* Karr, 34 Ill. App. 646; Steinam *v.* Strauss, 18 N.Y. Supp. 48; Hemmer *v.* Wolfer, 124 Ill. 435; Ford *v.* Delta, etc., Co., 43 Fed. R. 181.

[3] Hobby *v.* Bunch, 83 Ga. 1, S. C. 20 Am. St. R. 301, 305.

[4] Mack *v.* Brown, 73 Ill. 295; Mullins *v.* Sparks, 43 Miss. 129; Cole *v.* Hocha, 21 La. Ann. 613; Von Roy *v.* Blackman, 3 Woods (U. S.), 98; Hammond *v.* Olive, 44 Miss. 543; Wilkinson *v.* Bayley, 71 Wis. 131; Wheeler *v.* Wilkins, 19 Mich. 78. Of course the service can not be made upon the plaintiff himself, although he is a member of the defendant's family. Hemmer

§ 359. **Service on corporations.**—At common law service on the officers of a domestic corporation was held to be service on the corporation,[1] but jurisdiction over a foreign corporation could not be thus acquired.[2] The entire subject of service on corporations, whether foreign or domestic, is now regulated largely by statute. Legislative enactments providing that if a foreign corporation does business in the State service may be had upon its managing agent or head officer in the State in the same manner as in case of a domestic corporation are constitutional.[3] The service should be made upon the agent designated by the statute, and the return should show his official position in such a manner as to make it clear that the service was upon the officer or agent designated by the statute, and that he was served in his official or representative character.[4] So it has been held that where the statute permits service upon a subordinate officer only when the president or highest officer is absent or a non-resident, the return of service upon the subordinate officer should show the absence or non-residence of

v. Wolfer, 124 Ill. 435, S. C. 11 N. E. R. 885.

[1] Merriwether *v.* Bank, Dud. (S. Car.) 36; McQueen *v.* Middletown Mfg. Co., 16 Johns. (N. Y.) 5; Hartford City Fire Ins. Co. *v.* Carrugi, 41 Ga. 660; Heltzell *v.* Chicago, etc., R. R. Co., 77 Mo. 315; 1 Tidd's Pr., 121.

[2] Barnett *v.* Chicago, etc., R. R. Co., 4 Hun (N. Y.), 114; Peckham *v.* North Parish, 16 Pick. (Mass.) 274. See, also, Middough *v.* St. Joseph, etc., R. R. Co., 51 Mo. 520.

[3] Moulin *v.* Ins. Co., 24 N. J. L. 222; Nat. Bank of Commerce *v.* Huntington, 129 Mass. 444; Gibson *v.* Manufacturers, etc., Co., 144 Mass. 81; Railroad Co. *v.* Harris, 12 Wall. (U. S.) 65, 81; Paul *v.* Virginia, 8 Wall. (U. S.) 168; Lafayette Ins. Co. *v.* French, 18 How. (U. S.) 404; Hagerman *v.* Empire State Co., 97 Pa. St. 534; McNichol *v.* United States Mercantile Rep. Agency, 74 Mo. 457; Mineral Point R. R. Co. *v.* Keep, 22 Ill. 9, S. C. 74 Am. Dec. 124; Hannibal, etc., R. R. *v.* Crane, 102 Ill. 249. And, as held in many of the cases just cited, the legislature may require the appointment of a resident agent to accept service as a condition precedent to transacting business in the State.

[4] Jones *v.* Hartford Ins. Co., 88 N. Car. 499; Powder Co. *v.* Oakdale, etc., Co., 14 Phila. (Pa.) 166; Oxford Iron Co. *v.* Spradley, 42 Ala. 24; O'Brien *v.* Shaw's Flat, 10 Cal. 343; Great West. Mining Co. *v.* Woodmas, etc., Co., 12 Col. 46, S. C. 13 Am. St. R. 204; Lake Shore, etc., R'y Co. *v.* Hunt, 39 Mich. 469; Dickerson *v.* Burlington, etc., R. R. Co., 43 Kan. 702, S. C. 23 Pac. R. 936; Plemmons *v.* So. Imp. Co., 108 N. Car. 614, S. C. 13 S. E. R. 188; Amy *v.* Watertown, 130 U. S. 301, S. C. 9 Sup. Ct. R. 530. In a recent case it was held that service upon the deputy secretary of State was insuffi-

the president.[1] It is usually provided that service shall be made upon the "general managing agent" or "head officer" in the State, and it is sometimes difficult to determine who is such "managing agent" or "head officer." A general superintendent of a railroad company has been held to be its managing agent under such a statute.[2] So has a local express agent[3] and an insurance agent having full charge of the company's business;[4] but ticket sellers,[5] baggage-masters,[6] and agents to solicit insurance, without authority to consummate it,[7] have been held not to be general managing agents.[8] Much depends upon the circumstances of each particular case, and the only general rule that can be laid down upon the subject

cient under a statute providing for service upon the secretary of State as agent of foreign corporations. Lonkey *v.* Keyes Silver Mining Co. (Nev.), 17 L. R. A. 351.

[1] St. Louis, Alton & T. H. R. R. Co. *v.* Dorsey, 47 Ill. 288; Miller *v.* Norfolk, etc., R. R. Co., 41 Fed. R. 431; Toledo, W. & W. R'y Co. *v.* Owen, 43 Ind. 405; Hoen *v.* Atlantic, etc., R. R. Co., 64 Mo. 561. Compare Comet Consolidated Min. Co. *v.* Frost, 15 Col. 310, S. C. 25 Pac. R. 506; Kansas City, etc., R. R. Co. *v.* Daughtry, 138 U. S. 298, S. C. 11 Sup. Ct. R. 306.

[2] Commerce Bank *v.* Rutland, etc., R. R. Co., 10 How. Pr. (N. Y.) 1. So has a general passenger agent. Tuchband *v.* Chicago, etc., R. R. Co., 115 N. Y. 437. But compare Maxwell *v.* Atchison, etc., R. R. Co., 34 Fed. R. 286.

[3] Adams Express Co. *v.* St. John, 17 Ohio St. 641.

[4] Bain *v.* Globe Ins. Co., 9 How. Pr. (N. Y.) 448.

[5] Doty *v.* Mich. Cent. R. R. Co., 8 Abb. Pr. (N. Y.) 427; Mackereth *v.* Glasgow, etc., R. R. Co., L. R., 8 Exch. 149. See, however, Smith *v.* Chicago, etc., R. R. Co., 60 Iowa, 512; Missouri Pac. R. R. Co. *v.* Collier, 62 Texas, 318.

[6] Flynn *v.* Hudson River R. R. Co., 6 How. Pr. (N. Y.) 308.

[7] Parke *v.* Com. Ins. Co., 44 Pa. St. 422; Connors *v.* Prudential Ins. Co., 11 Pa. Co. Ct. 50.

[8] Other cases showing who are and who are not regarded as managing agents, are cited and reviewed in the note to Hampson *v.* Weare, 66 Am. Dec. 116, 120. See, also, Eddy *v.* Lafayette, 49 Fed. R. 807; Goltschalk Co. *v.* Distilling, etc., Co., 50 Fed. R. 681; Burgess *v.* Aultman, 80 Wis. 292; Chicago, B. & Q. R. R. Co. *v.* Manning, 23 Neb. 552, S. C. 37 N. W. R. 462; Dillard *v.* Central Va. Iron Co., 82 Va. 734, S. C. 1 S. E. R. 124; Berlin Iron Bridge Co. *v.* Norton, 51 N. J. L. 442, S. C. 17 Atl. R. 1079; New Albany & S. R. R. Co. *v.* Grooms, 9 Ind. 243; Rehm *v.* German Ins. etc., Co., 125 Ind. 135, S. C. 25 N. E. R. 173; Winslow *v.* Staten Island, etc., Co., 21 N. Y. S. R. 87; Taylor *v.* Granite, etc., Ass'n, 136 N. Y. 343, S. C. 32 N. E. R. 992; Southwestern Mut. Ben. Ass'n *v.* Swenson, 49 Kan. 449, S. C. 30 Pac. R. 405; Winney *v.* Sandwich, etc., Co., 84 Iowa, —, S. C. 50 N. W. R. 565; Van Dresser *v.* Oregon, etc., Co., 48 Fed. R. 202; Wilson *v.* Martin-Wilson, etc., Co., 149 Mass. 24.

is that service, under such statutes, must be made upon a head officer or agent who has general supervision of the affairs of the corporation, and whose knowledge is that of the corporation.[1] Service can not be had upon an officer or agent of a foreign corporation which has no office and transacts no business within the State, while such officer is casually in the State upon his own private business.[2]

§ 360. **Service on partners.**—Where partners are sued, service should be had upon all the partners, if possible, in order to obtain a personal judgment enforceable against their individual property; but the legislature may authorize judgment to be entered against a partnership upon service on any one or more of the partners, enforceable against the partnership property and the individual property of the partners who are properly served.[3] It is doubtful, however, if a personal judgment can be rendered against a non-resident partner, who is not served and who does not appear, so as to be enforceable against his individual property, and the weight of authority seems to be to the effect that statutes attempting to authorize a personal

[1] Newby *v.* Colt's Pat., etc., Co., L. R., 7 Q. B. 293; Weight *v.* Liverpool, etc., Ins. Co., 30 La. Ann. 1186; Upper Miss. Transp. Co. *v.* Whittaker, 16 Wis. 220; Emerson *v.* Auburn, 13 Hun (N. Y.), 150; Waco *v.* Wheeler, 59 Texas, 554; Blanc *v.* Paymaster Mining Co., 95 Cal. 524, S. C. 29 Am. St. R. 149 (service on clerk insufficient); Great West Mining Co. *v.* Woodmas, etc., Co., 12 Col. 46, S. C. 13 Am. St. R. 204 (service on foreman insufficient); Barrett *v.* Am. Tel., etc., Co. (N. Y.), 34 N. E. R. 289 (service on general superintendent sufficient); Taylor *v.* Granite, etc., Ass'n, 136 N. Y. 343, S. C. 32 N. E. R. 992 (service on attorney insufficient).

[2] Fitzgerald & Mallory Const. Co. *v.* Fitzgerald, 137 U. S. 98, S. C. 11 Sup. Ct. R. 36, 39; St. Clair *v.* Cox, 106 U. S. 350, S. C. 1 Sup. Ct. R. 354; Phillips *v.* Library Co., 141 Pa. St. 462, S. C. 21 Atl. R. 640; Galveston City R. R. Co. *v.* Hook, 40 Ill. App. 547. Compare Klopp *v.* Creston City, etc., Co. (Neb.), 52 N. W. R. 819; Shickle, etc., Iron Co. *v.* Wiley Construction Co., 61 Mich. 226, S. C. 1 Am. St. R. 571.

[3] Sugg *v.* Thornton, 132 U. S. 524, S. C. 10 Supt. Ct. R. 163; Patten *v.* Cunnington, 63 Texas, 666; Burnett *v.* Sullivan, 58 Texas, 535; Johnson *v.* Lough, 22 Minn. 203; Harker *v.* Brink, 24 N. J. L. 333; Winters *v.* Means, 25 Neb. 241, S. C. 13 Am. St. R. 489; Gunzberg *v.* Miller, 39 Mich. 80. See, also, Parker *v.* Danforth, 16 Mass. 299; Nixon *v.* Downey, 42 Iowa, 78; Demoss *v.* Brewster, 12 Miss. 661; Anderson *v.* Arnette, 27 La. Ann. 237.

judgment and execution against such a partner and his individual property are unconstitutional.[1]

§ 361. Service on infants.—Except where otherwise provided, personal service should be made upon infants in the same manner as upon adults.[2] An infant is not bound by a waiver of such service either by himself or his guardian.[3] In some States it is also provided that the father, mother, or guardian of the infant must also be served with process.[4] Where there has been no personal service upon an infant a judgment as against him is generally considered voidable,[5] although there are some authorities which hold it absolutely void.[6]

[1] Tay *v.* Hawley, 39 Cal. 93; Bruen *v.* Bokee, 4 Denio (N. Y.), 56, S. C. 47 Am. Dec. 239; Wood *v.* Watkinson, 17 Conn. 500, S. C. 44 Am. Dec. 562, and note; Mason *v.* Eldred, 6 Wall. (U. S.) 231; United States *v.* American Bell Telephone Co., 29 Fed. R. 17; Oakley *v.* Aspinwall, 4 N. Y. 514; Public Works *v.* Columbia College, 17 Wall. (U. S.) 527. Compare Whitmore *v.* Shiverick, 3 Nev. 288; Guimond *v.* Nast, 44 Texas, 114; Kidd *v.* Brown, 2 How. Pr. (N. Y.) 20; Swift *v.* Stark, 2 Ore. 97.

[2] Abdil *v.* Abdil, 26 Ind. 287; Hough *v.* Canby, 8 Blackf. (Ind.) 301; Coleman *v.* Coleman, 3 Dana (Ky.), 398, S. C. 28 Am. Dec. 86; Larkins *v.* Bullard, 88 N. Car. 35; Helms *v.* Chadbourne, 45 Wis. 60; Hickenbotham *v.* Blackledge, 54 Ill. 316; Galpin *v.* Page, 18 Wall. (U. S.) 350; Johnston *v.* San Francisco Savings Ass'n, 63 Cal. 554; Baumgartner *v.* Guessfield, 38 Mo. 36.

[3] Robbins *v.* Robbins, 2 Ind. 74; De La Hunt *v.* Holderbaugh, 58 Ind. 285; Ingersoll *v.* Mangam, 84 N. Y. 622; Wheeler *v.* Ahrenbeak, 54 Texas, 535; Genobles *v.* West, 23 So. Car. 154; Clark *v.* Thompson, 47 Ill. 25, S. C. 95 Am. Dec. 457, and note; Donlin *v.* Hettinger, 57 Ill. 348; Bonnell *v.* Holt, 89 Ill. 71; Hawes on Juris., § 321.

[4] Ingersoll *v.* Ingersoll, 42 Miss. 155; Johnson *v.* McCabe, 42 Miss. 255; Billups *v.* Brander, 56 Miss. 495; Bellamy *v.* Guhl, 62 How. Pr. (N. Y.) 460; Cox *v.* Story, 80 Ky. 64; McDermott *v.* Thompson, 29 Fla. 299, S. C. 10 So. R. 584; Moulton *v.* Moulton, 47 Hun (N. Y.), 696; Dohms *v.* Mann, 76 Ia. 723; Stearns *v.* Wallace, 58 N. H. 228; Faust *v.* Faust, 31 So. Car. 576; Gay *v.* Grant, 101 N. Car. 206.

[5] Robb *v.* Lessee of Irwin, 15 Ohio, 689; McAnear *v.* Epperson, 54 Texas, 220, S. C. 38 Am. R. 625; Preston *v.* Dunn, 25 Ala. 507; Larkins *v.* Bullard, 88 N. Car. 35; Gronfier *v.* Puymirol, 19 Cal. 629; Bernecker *v.* Miller, 44 Mo. 102; Frierson *v.* Travis, 39 Ala. 150. See, also, 10 Am. & Eng. Ency. of Law, 690, note.

[6] Insurance Co. *v.* Bangs, 103 U. S. 435; Whitney *v.* Porter, 23 Ill. 445; Piercy *v.* Piercy, 5 W. Va. 199; McDaniel *v.* Correll, 19 Ill. 226, S. C. 68 Am. Dec. 587; Allsmiller *v.* Freutchenicht, 86 Ky. 198, S. C. 5 S. W. R. 746.

§ 362. **Service by publication.**—It is provided by statute in most, if not all, of the States, that in certain classes of cases notice of the pendency of an action may be given by publication in a newspaper. Service of process in this mode is called constructive service. It is generally authorized where the defendant has property within the jurisdiction of the court, as in cases of attachment, and suits to foreclose mortgages, or to determine and quiet title to land within the State, and the defendant is a non-resident or has absconded, making it impossible to get personal service upon him.[1] It is also used extensively in divorce proceedings.[2] Statutes providing for service by publication, in all such cases have been held constitutional.[3] But a strictly personal judgment can not be rendered upon such service.[4] And in a recent case, it was expressly held that a statute assuming to authorize service by publication upon resident defendants in actions strictly *in personam*, is unconstitutional.[5]

[1] See Sexton *v.* Rhames, 13 Wis. 99; Bobb *v.* Woodward, 42 Mo. 482; People *v.* Huber, 20 Cal. 81; Lawrence *v.* State, 30 Ark. 719; Lovejoy *v.* Lunt, 48 Me. 377; Cook *v.* Farren, 34 Barb. (N. Y.) 95.

[2] See Pomeroy *v.* Betts, 31 Mo. 419; Jarvis *v.* Barrett, 14 Wis. 591; Wilson *v.* Ladd, 49 Me. 73; Estate of Newman, 75 Cal. 213, S. C. 7 Am. St. R. 146, and note.

[3] Arndt *v.* Griggs, 134 U. S. 316, S. C. 10 Sup. Ct. Rep. 557; Angell *v.* Angell, 14 R. I. 541; Mason *v.* Messenger, 17 Iowa, 261; Palmer *v.* McCormick, 28 Fed. R. 541; Shepherd *v.* Ware, 46 Minn. 174, S. C. 24 Am. St. R. 212; Perkins *v.* Wakeham, 86 Cal. 580, S. C. 21 Am. St. Rep. 67; Hogle *v.* Mott, 62 Vt. 255, S. C. 22 Am. St. Rep. 106; Wunstel *v.* Landry, 39 La. Ann. 312, S. C. 1 So. Rep. 893; Dillon *v.* Heller, 39 Kan. 599, S. C. 18 Pac. R. 693; Essig *v.* Lower, 120 Ind. 239, S. C. 21 N. E. R. 1090; Mellen *v.* Iron Works, 131 U. S. 352, S. C. 9 Sup. Ct. Rep. 781; Watson *v.* Ulbrich, 18 Neb. 186, S. C. 24 N. W. R. 732. Perhaps it would be better to say that they are not necessarily unconstitutional.

[4] Sowders *v.* Edmunds, 76 Ind. 123; Pennoyer *v.* Neff, 95 U. S. 714; Cloyd *v.* Trotter, 118 Ill. 391; Lydiard *v.* Chute, 45 Minn. 277; Bank *v.* Carter, 88 Tenn. 279; Belcher *v.* Chambers, 53 Cal. 635; Dillon *v.* Heller, 39 Kan. 599; Augusta Savings Bank *v.* Stelling, 31 So. Car. 360; York *v.* State, 73 Tex. 651; Cooper *v.* Smith, 25 Iowa, 269; Bartlett *v.* Spicer, 75 N. Y. 528; Hart *v.* Sansom, 110 U. S. 151; Denny *v.* Ashley, 12 Col. 165; Dearing *v.* Bank, 5 Ga. 497, S. C. 48 Am. Dec. 300, and note to Flint River Steamboat Co. *v.* Foster, 48 Am. Dec. 248, 273.

[5] Bardwell *v.* Collins, 44 Minn. 97, S. C. 20 Am. St. R. 547. This was a suit to foreclose a mortgage, yet it was held a proceeding *in personam*.

§ 363. **Statute must be strictly followed.**—As service by publication is a statutory mode of service, the provisions and requirements of the statute must be strictly complied with.[1] But defects that might be fatal upon a direct attack will not always render a judgment based upon such service absolutely void when attacked collaterally.[2] Thus it has been held that a judgment is not subject to collateral attack because the affidavit for publication omitted the name of the plaintiff and the usual caption, when properly filed in the cause.[3] So, where the affidavit simply alleged non-residence and failed to expressly state that the defendant was a necessary party.[4] So, too, where the affidavit states facts showing the existence of the statutory grounds for publication, and not mere opinions or conclusions of law, but states them too generally.[5] But in other cases, many of which can not easily be distinguished from some of those just cited, the defects or omissions in the affidavit were held sufficient to make the judgment void and subject to collateral attack.[6] The same conflict exists among

[1] Likens *v.* McCormick, 39 Wis. 313; Scorpion, etc., Co. *v.* Marsano, 10 Nev. 370; Allen *v.* Bankston, 33 Ark. 740; Hartley *v.* Boynton, 17 Fed. R. 873; Beckett *v.* Cuenin, 15 Col. 281, S. C. 22 Am. St. R. 399, and note; Byrnes *v.* Sampson, 74 Texas, 79; Cassidy *v.* Woodward, 77 Iowa, 354. But see Quarl *v.* Abbett, 102 Ind. 233; 3 Blk. Com. 283, 444.

[2] See Ogden *v.* Walters, 12 Kan. 282; Pennoyer *v.* Neff, 95 U. S. 714; Belmont *v.* Cornen, 82 N. Y. 256; Lawson *v.* Moorman, 85 Va. 880; Hardy *v.* Beaty, 84 Texas, 562, S. C. 31 Am. St. R. 80, and cases cited in the following notes.

[3] Harris *v.* Lester, 80 Ill. 307, 311; Palmer *v.* McCormick, 30 Fed. R. 82.

[4] Carrico *v.* Tarwater, 103 Ind. 86. See, also, Dowell *v.* Lahr, 97 Ind. 146, 151; Essig *v.* Lower, 120 Ind. 239, 241, S. C. 21 N. E. R. 1090.

[5] Britton *v.* Larson, 23 Neb. 806, S. C. 37 N. W. R. 681; Little *v.* Chambers, 27 Iowa, 522, 526; Howe Machine Co. *v.* Pettibone, 74 N. Y. 68; Harrison *v.* Beard, 30 Kan. 532; Barton *v.* Sanders, 16 Ore. 51, S. C. 16 Pac. R. 921; Ogden *v.* Walters, 12 Kan. 282, 293; Shippen *v.* Kimball, 47 Kan. 173, S. C. 27 Pac. R. 813; Carr's Adm'r *v.* Carr (Ky.), 18 S. W. R. 453.

[6] Nelson *v.* Ronntree, 23 Wis. 367; Harris *v.* Claflin, 36 Kan. 543, S. C. 13 Pac. R. 830; Atkins *v.* Atkins, 9 Neb. 191; Harrington *v.* Loomis, 10 Minn. 366; Alderson *v.* Marshall, 7 Mont. 288, S. C. 16 Pac. R. 576; Drysdale *v.* Biloxi Canning Co., 67 Miss. 534, S. C. 7 So. R. 541; Charles *v.* Morrow, 99 Mo. 638, S. C. 12 S. W. R. 903; Stegall *v.* Huff, 54 Tex. 193; Hull *v.* Hull, 35 W. Va. 155, S. C. 29 Am. St. R. 800.

the authorities as to the effect of errors, and omissions in the order for publication[1] and in the notice itself.[2]

§ 364. **Affidavit for publication.**—It is generally provided that an affidavit should first be filed as an essential requisite to a valid notice by publication, stating the facts required by statute to authorize service by publication.[3] Thus, it has been held that it should show the existence and nature of the cause of action,[4] that the defendant is a non-resident,[5] and, under some statutes, that, although the plaintiff had used due diligence in attempting to find him, he could not be found within the State,[6] that he has property within the State,[7] and all other

[1] Cases in which the error or defect was held not to be fatal on collateral attack: Cason *v.* Cason, 31 Miss. 578; Ward *v.* Lowndes, 96 N. Car. 367; Anderson *v.* Goff, 72 Cal. 65; Blight's Heirs *v.* Banks, 6 T. B. Mon. (Ky.) 192, S. C. 17 Am. Dec. 136; Kane *v.* McCown, 55 Mo. 181 (but compare Otis *v.* Epperson, 88 Mo. 131); Williams *v.* Williams, 125 Ind. 156, S. C. 25 N. E. R. 176. Cases in which the error or defect was held to render the judgment absolutely void: Eastman *v.* Linn, 26 Minn. 215; Brown *v.* Corbin, 40 Minn. 508, S. C. 42 N. W. R. 481; Russell *v.* Gilson, 36 Minn. 366, S. C. 31 N. W. R. 692; Bardsley *v.* Hines, 33 Ia. 157; Royer *v.* Foster, 62 Iowa, 321, S. C. 17 N.W. R.516; Odell *v.* Campbell, 9 Ore. 298.

[2] Held not fatal on collateral attack in Woodbury *v.* Maguire, 42 Iowa, 339; Dahms *v.* Alston, 72 Iowa, 411, S. C. 34 N. W. R. 182; Lane *v.* Innes, 43 Minn. 137, S. C. 45 N. W. R. 4; McMullen *v.* State, 105 Ind. 334, S. C. 4 N. E. R. 903; Morgan *v.* Woods, 33 Ind. 23; Loring *v.* Binney, 38 Hun (N. Y.), 152; Johnson *v.* Gage, 57 Mo. 160; Moore *v.* Neil, 39 Ill. 256, S. C. 89 Am. Dec. 303; Jasper Co. *v.* Wadlow, 82 Mo. 172. Held fatal upon collateral attack in Wescott *v.* Archer, 12 Neb. 345, S. C. 11 N. W. R. 491; Stewart *v.* Anderson, 70 Texas, 588, S. C. 8 S. W. R. 295; Frazier *v.* Miles, 10 Neb. 109, S. C. 4 N. W. R. 930; Brownfield *v.* Dyer, 7 Bush. (Ky.) 505; Bird *v.* Norquist, 46 Minn. 318, S. C. 48 N. W. R. 1132.

[3] See Schell *v.* Leland, 45 Mo. 289; Bardsley *v.* Hines, 33 Iowa, 157; Merrill *v.* Montgomery, 25 Mich. 73; Beckett *v.* Cuenin, 15 Col. 281, S. C. 22 Am. St. R. 399.

[4] Claypool *v.* Houston, 12 Kan. 324; Fontaine *v.* Houston, 58 Ind. 316; Atkins *v.* Atkins, 9 Neb. 191; Slocum *v.* Slocum, 17 Wis. 150; Forbes *v.* Hyde, 31 Cal. 342.

[5] Fontaine *v.* Houston, 58 Ind. 316; Bixby *v.* Smith, 49 How. Pr. (N.Y.)50.

[6] Easterbrook *v.* Easterbrook, 64 Barb. (N.Y.) 421; McCracken *v.* Flanagan, 127 N. Y. 493, S. C. 24 Am. St. R. 481; Bixby *v.* Smith, 49 How. Pr. (N.Y.)50; Mackubin *v.* Smith, 5 Minn. 367; Chase v. Kaynor, 78 Iowa, 449, S. C. 43 N. W. Rep. 269; McDonald *v.* Cooper, 32 Fed. R. 745.

[7] Spiers *v.* Halstead, 71 N. Car. 209; Manning *v.* Heady, 64 Wis. 630, S. C. 25 N. W. R. 1.

jurisdictional facts required by statute.[1] But, as already stated, merely formal defects or irregularities will not necessarily render the affidavit subject to collateral attack;[2] and it has been held that where a collateral attack is made upon a domestic judgment of a court of general jurisdiction it will be presumed, in the absence of anything to the contrary, that a proper affidavit was made, although none is found in the record.[3]

§ 365. **Order and notice.**—A valid order is necessary to support service by publication as against a direct attack.[4] It must comply with the statutory requirements in all material respects.[5] Thus, where the statute requires the order to be made by the court, the order of the clerk is insufficient, and will not, it has been held, support a judgment by default even as against a collateral attack.[6] But, under a statute providing that the order must direct service by publication for a specified time, "or, at the option of the plaintiff, by service of the summons, and of a copy of the complaint and order, without the State, upon the defendant personally," it was held that the order need not direct both modes of service. The court said that, while the order might properly direct both modes of service, it might just as properly direct either mode alone, and if followed by due service in that manner the service would be good.[7] The order and notice should be harmonious,[8] and it is customary to

[1] See Braly *v.* Seaman, 30 Cal. 610; Drake *v.* Hale, 38 Mo. 346; Riley *v.* Nichols, 1 Heisk. (Tenn.) 16; Cissell *v.* Pulaski Co., 10 Fed. R. 891.

[2] See § 363, *ante*. (Statute must be strictly followed.)

[3] Hardy *v.* Beaty, 84 Texas, 562, S. C. 31 Am. St. R. 80, 84. See, also, Williams *v.* Haynes, 77 Texas, 283, S. C. 19 Am. St. R. 752, and note; *post*, § 368. (Proof of publication.)

[4] Frisk *v.* Reigelman, 75 Wis. 499, S. C. 43 N. W. R. 1117; Beaupre *v.* Brigham, 79 Wis. 436, S. C. 48 N. W. R. 596; New York Baptist Union *v.* Atwell, 95 Mich. 239, S. C. 54 N. W. R. 760.

[5] Fetes *v.* Volmer, 8 N. Y. Supp. 294; Odell *v.* Campbell, 9 Ore. 298.

[6] Bardsley *v.* Hines, 33 Iowa, 157; Royer *v.* Foster, 62 Iowa, 321, S. C. 17 N.W. R. 516; Townsend *v.* Tallant, 33 Cal. 45. But these decisions are of questionable soundness in so far as they hold the proceedings subject to collateral attack. See Williams *v.* Williams, 125 Ind. 156, S. C. 25 N. E. R. 176.

[7] Matter of Field, 131 N.Y. 184, overruling Ritten *v.* Griffith, 16 Hun, 454.

[8] See Pomeroy *v.* Betts, 31 Mo. 419; Elee *v.* Wait, 28 Ill. 70. But compare Loring *v.* Binney, 38 Hun, 152, S. C. affirmed in 101 N. Y. 623.

recite in the order the jurisdictional matters on which it is founded.[1] The notice should properly name the defendant, and if the wrong party is named it will be insufficient, even, it seems, as against a collateral attack.[2] But merely formal defects will not prevent jurisdiction from attaching.[3] The requirements as to the notice are, in the main, the same as in the case of an ordinary summons, and the effect of failing to comply with them is generally the same. As these subjects have already been treated by us,[4] it is sufficient at this place to call attention to a few additional authorities showing what is required in certain specific cases.[5]

§ 366. **Requisites as to newspaper in which publication is made.**—Where notice is given by publication it is generally required that it shall be published in some local newspaper of general circulation. Where the particular newspaper is designated in the order, or the kind of newspaper is specified in the statute, the publication must be made in the kind of a paper specified and in the particular paper designated in the order.[6] But, in the absence of any such requirement, it has been held that the publication may be made in any public newspaper, published in the English language, whether it be a scientific,

[1] Newman *v.* Cincinnati, 18 Ohio, 323.

[2] Troyer *v.* Wood, 96 Mo. 478, S. C. 10 S. W. R. 42; Chamberlain *v.* Blodgett, 96 Mo. 482, S. C. 10 S. W. R. 44; Freeman *v.* Hawkins, 77 Texas, 498, S. C. 14 S. W. R. 364; Colton *v.* Rupert, 60 Mich. 318, S. C. 27 N. W. R. 520; Schissel *v.* Dickson, 129 Ind. 139, S. C. 28 N. E. R. 540; Weaver *v.* Carpenter, 42 Ia. 343; Entrekin *v.* Chambers, 11 Kan. 368.

[3] Lane *v.* Innes, 43 Minn. 137, S. C. 45 N. W. R. 4; Voelz *v.* Voelz, 80 Wis. 504, S. C. 50 N. W. R. 398.

[4] See §§ 348–355, *ante*.

[5] See Streeter *v.* Penobscot Lumber, etc., Co., 74 Mich. 123, S. C. 41 N. W. R. 883; Otis *v.* De Boer, 116 Ind. 531, S. C. 19 N. E. R. 317 (suit to enforce lien of drainage assessment); Allen *v.* Ray, 96 Mo. 542, S. C. 10 S. W. R. 153 (tax suit); Elee *v.* Wait, 28 Ill. 70 (return day should be fixed); Wescott *v.* Archer, 12 Neb. 345, S. C. 11 N. W. R. 491 (attachment, property should be described); Feller *v.* Clark, 36 Minn. 338, S. C. 31 N. W. R. 175; Kipp *v.* Fernhold, 37 Minn. 132, S. C. 33 N. W. R. 697; Pickering *v.* Lomax, 120 Ill. 289, S. C. 11 N. E. R. 175 (tax cases, insufficient description in notice).

[6] Townsend *v.* Tallant, 33 Cal. 45, S. C. 91 Am. Dec. 617; Otis *v.* Epperson, 88 Mo. 131; Hafern *v.* Davis, 10 Wis. 501; Russell *v.* Gilson, 36 Minn. 366, S. C. 31 N. W. R. 692.

legal, commercial, religious or political newspaper.[1] It should, however, in the absence of any provision to the contrary, be a paper published in the English language.[2] Publication in the supplement of a paper is sufficient[3] where it is co-extensive in circulation with the paper itself.[4] And the fact that a local paper has a "patent inside," printed in another State, will not invalidate a notice published in such paper, although the statute requires the publication to be made in a paper printed in the county.[5] Nor will a slight discrepancy in the name of the paper invalidate the proceedings where it is in reality the same paper designated in the order.[6] But, under the "Sunday Laws" in force in most of the States, publication on Sunday, in a Sunday newspaper, is ineffective.[7]

§ 367. **Time of publication.**—The notice should be published for the statutory period,[8] but the fact that publication is made for a longer period than that required by statute will not invalidate the notice.[9] Where the publication is not made for the statutory period, that is, where the constructive service is not for a sufficient length of time, some courts hold that a judgment based thereon is absolutely void,[10] but others hold

[1] Kellogg *v.* Carrico, 47 Mo. 157; Kerr *v.* Hitt, 75 Ill. 51. But in other cases it is held that the paper must be a secular paper of general circulation. Beecher *v.* Stephens, 25 Minn. 146; Railton *v.* Lauder, 26 Ill. App. 655.

[2] Graham *v.* King, 50 Mo. 22, S. C. 11 Am. R. 401; Cincinnati *v.* Bickett, 26 Ohio St. 49.

[3] Supervisors *v.* Horton, 75 Iowa, 271.

[4] Tully *v.* Bauer, 52 Cal. 487; Zahradnicek *v.* Selby, 15 Neb. 579.

[5] Palmer *v.* McCormick, 30 Fed. R. 82.

[6] Soule *v.* Chase, 1 Rob. (N. Y.) 222; Frisk *v.* Reigelman, 75 Wis. 499, S. C. 43 N.W. R. 1117. Compare Russell *v.* Gilson, 36 Minn. 366, S. C. 31 N. W. R. 692.

[7] Shaw *v.* Williams, 87 Ind. 158, S. C. 44 Am. R. 756; Scammon *v.* Chicago, 40 Ill. 146; Smith *v.* Wilcox, 24 N. Y. 353; McLaughlin *v.* Wheeler (S. Dak.), 50 N. W. R. 834.

[8] Guaranty Trust, etc., Co. *v.* Buddington, 27 Fla. 215, 233, S. C. 12 L. R. A. 770; Hill *v.* Faison, 27 Texas, 428; Grewell *v.* Henderson, 5 Cal. 465, and authorities cited in the following notes.

[9] Taylor *v.* Coots, 32 Neb. 30, S. C. 29 Am. St. R. 426.

[10] Curran *v.* Board, 47 Minn. 313, S. C. 50 N.W. R. 237; West *v.* St. Paul, etc., R'y Co., 40 Minn. 189, S. C. 41 N.W. R. 1031; Fladland *v.* Delaplaine, 19 Wis. 459; Mohr *v.* Tulip, 40 Wis. 66, 76; Davis *v.* Reaves, 75 Tenn. 585; Northcutt *v.* Lemery, 8 Ore. 316; Palmer *v.* McMaster, 8 Mont. 186, S. C. 19 Pac. R. 585; Hull *v.* Chicago, etc., R. R. Co., 21 Neb. 371, S. C. 32 N. W. R. 162.

that it is not void and can not be successfully attacked collaterally.[1] Where the statute provides that publication shall be made for a certain number of months, it is generally held that it should be construed to mean calendar months, in the absence of any provision to the contrary.[2] In computing the number of days for which publication is required to be made, the first day, according to the modern rule, should be excluded and the last included.[3] Where the notice is required to be published once each week for a certain number of weeks, the full number of days necessary to constitute the requisite number of weeks must, according to the weight of authority, elapse between the date of the first publication and the return day.[4] So, it has been held that a statutory provision requiring publication for "three successive weeks" means that twenty-one days must elapse between the first publication and the return day, and not simply three insertions in a weekly newspaper covering only fifteen days.[5] Other cases have gone still

[1] Jackson *v.* State, 104 Ind. 516, S. C. 3 N. E. R. 863; Muncey *v.* Joest, 74 Ind. 409; Essig *v.* Lower, 120 Ind. 239, S. C. 21 N. E. R. 1090; Ballinger *v.* Tarbell, 16 Ia. 491; Smith *v.* Dubuque Co., 1 Ia. 492; *In re* Newman's Estate 75 Cal. 213, S. C. 16 Pac. R. 887; Havens *v.* Drake, 43 Kan. 484, S. C. 23 Pac. R. 621; Arnett *v.* Bailey, 60 Ala. 435; Hering *v.* Chambers, 103 Pa. St. 172; McGlawhorn *v.* Worthington, 98 N. Car. 199, S. C. 3 S. E. R. 633; Berrian *v.* Rogers, 43 Fed. R. 467.

[2] Guaranty Trust, etc., Co. *v.* Buddington, 27 Fla. 215, 233, S. C. 12 L. R. A. 770, and note; Guaranty Trust, etc., Co. *v.* Green Cove Spring, etc., Co., 139 U. S. 137, S. C. 11 Sup. Ct. R. 512. See, also, Chapter VIII, § 304. *Contra*, Stackhouse *v.* Halsey, 3 Johns. Ch. 73; Jackson *v.* Clark, 7 Johns. 217.

[3] Kane *v.* City of Brooklyn, 114 N. Y. 586, 594; Forsyth *v.* Warren, 62 Ill. 68; Mitchell *v.* Woodson, 37 Miss. 567; Savings, etc., Society *v.* Thompson, 32 Cal. 347; Hagerman *v.* Ohio Building, etc., Ass'n, 25 Ohio St. 186.

[4] Bacon *v.* Kennedy, 56 Mich. 329; Williams *v.* Sacramento Co., 58 Cal. 237; Boyd *v.* McFarlin, 58 Ga. 208; McDonald *v.* Cooper, 32 Fed. R. 735; Bank *v.* Pac. Nat. Bank, 89 N. Y. 397; Dillard *v.* Krise, 86 Va. 410, S. C. 10 S. E. R. 430. *Contra* Knowles *v.* Summey, 52 Miss. 377; Lowenstine *v.* Gillespie, 6 Lea (Tenn.), 641; Gilmore *v.* Sapp, 100 Ill. 297.

[5] Loughridge *v.* City of Huntington, 56 Ind. 253; Security Co. *v.* Arbuckle, 123 Ind. 518, S. C. 24 N. E. R. 329. See, also, Gibson *v.* Roll, 30 Ill. 172; Davis *v.* Robinson, 70 Tex. 394. *Contra*, Swett *v.* Sprague, 55 Me. 190. And, compare, Haywood *v.* Russell, 44 Mo. 252; Bennett *v.* Hetherington, 41 Ia. 142; Cox *v.* North Wisconsin Lumber Co., 82 Wis. 141, S. C. 51 N. W. R. 1130; Calvert *v.* Calvert, 15 Col. 390, S. C. 24 Pac. R. 1043.

further, holding that where publication is required for a certain time before the return day, or the happening of some event, the publication must be complete that length of time before the event.[1] A longer notice than that required will not necessarily vitiate the proceedings.[2]

§ 368. **Proof of publication.**—Publication of notice is generally proved by the affidavit of the editor or publisher of the paper, or by his foreman or clerk, with a copy of the printed notice annexed.[3] It has been held, however, that although there is no affidavit in the record, a recital in the judgment or decree showing due service of process is at least *prima facie*, if not conclusive, evidence of such service, and that it can not be collaterally attacked in the courts of the State in which the judgment was rendered.[4] But where the return or proof shows that there was no service it has been held that the judgment is void, notwithstanding a recital of service in the record.[5]

[1] Mowry *v.* Blandin, 64 N. H. 3; Bussey *v.* Leavitt, 12 Me. 378. In Security Co. *v.* Arbuckle, 123 Ind. 518, S. C. 24 N. E. R. 329, it was held sufficient, however, under a statute requiring publication for three weeks successively, thirty days before the return day, where three full weeks elapsed between the date of the first publication and the thirty days, or, in other words, fifty-two (fifty-one) days between the first publication and the return day. So, in Horn *v.* Indianapolis Nat. Bank, 125 Ind. 381, S. C. 9 L. R. A. 676.

[2] Taylor *v.* Reid, 103 Ill. 349; Tooke *v.* Newman, 75 Ill. 215; Kipp *v.* Collins, 33 Minn. 394; Beal *v.* Blair, 33 Ia. 318; Taylor *v.* Coots, 32 Neb. 30, S. C. 48 N. W. R. 964.

[3] Bolin *v.* Francis, 72 Ia. 619; Kay *v.* Watson, 17 Ohio, 27; Cissell *v.* Pulaski Co., 3 McCrary (U. S.), 446; Sharp *v.* Daugney, 33 Cal. 505; Pennoyer *v.* Neff, 95 U. S. 714. But, in Wilkinson *v.* Conaty, 65 Mich. 614, S. C. 32 N. W. R. 841, it was held unnecessary to attach the notice cut from the paper.

[4] Robertson *v.* Winchester, 1 Pick. (Tenn.) 171, S. C. 1 S. W. R. 781; Sidwell *v.* Worthington's Heirs, 8 Dana (Ky.), 74, 77; Andrews *v.* Bernhardi, 87 Ill. 365; Dowell *v.* Lahr, 97 Ind. 146; Beattie *v.* Wilkinson, 36 Fed. R. 646; Prout *v.* People, 83 Ill. 154; Sargeant *v.* State Bank, 12 How. (U. S.) 371, 384; Treadway *v.* Eastburn, 57 Tex. 209, 213; Hardy *v.* Beaty, 84 Tex. 562, S. C. 31 Am. St. R. 80; Fowler *v.* Whiteman, 2 Ohio St. 270; English *v.* Woodman, 40 Kan. 412, S. C. 20 Pac. R. 262. Compare Hunter *v.* Spotswood, 1 Wash. (Va.) 145.

[5] Coan *v.* Clow, 83 Ind. 417, 419; Hawkins *v.* Hawkins, 28 Ind. 66; Mickel *v.* Hicks, 19 Kan. 578, S. C. 27 Am. R. 161; Barber *v.* Morris, 37 Minn. 194, S. C. 5 Am. St. R. 836, 838; Dogan *v.* Brown, 44 Miss. 235; Hobby

Where service has in fact been made and the record fails to show it or the affidavit of publication is defective, the court may permit the affidavit to be amended or filed *nunc pro tunc*.[1] The affidavit should show that all the requirements of the statute have been complied with.[2] Thus, it should show that the publication was made in the proper paper,[3] that it was made for the requisite period,[4] and that the affiant is a person authorized by statute to make the affidavit.[5]

§ 369. **Mailing and posting notice.**—It is frequently provided that, in addition to publishing notice in a newspaper, a copy of the paper or the notice shall be mailed to the defendant,[6] if his address be known, or that a copy of the notice shall be posted in some public place.[7] The notice should be mailed at the proper place,[8] and properly addressed.[9] The affidavit

v. Bunch, 83 Ga. 1, S. C. 20 Am. St. R. 301; Laney *v.* Garbee, 105 Mo. 355, S. C. 16 S. W. R. 831; Fowler *v.* Simpson, 79 Tex. 611; Sibley *v.* Waffle, 16 N. Y. 180. See, also, Adams *v.* Cowles, 95 Mo. 501, S. C. 6 Am. St. R. 74; Settlemier *v.* Sullivan, 97 U. S. 444. And where the judgment is directly attacked by appeal, the absence of proof of publication has been held fatal, notwithstanding a recital of service in the judgment. Weeks *v.* Garibaldi, etc., Co., 73 Cal. 599, S. C. 15 Pac. R. 302.

[1] Britton *v.* Larson, 23 Neb. 806, S. C. 37 N. W. R. 681; Cullum *v.* Batre, 2 Ala. 415; Burr *v.* Seymour, 43 Minn. 401, S. C. 45 N. W. R. 715; Frisk *v.* Reigelman, 75 Wis. 499, S. C. 43 N.W. R. 1117; Hackett *v.* Lathrop, 36 Kan. 661, S. C. 14 Pac. R. 220; Weaver *v.* Roberts, 84 N. Car. 493; Estate of Newman, 75 Cal. 213, S. C. 7 Am. St. R. 146.

[2] Gibney *v.* Crawford, 51 Ark. 34; Coster *v.* Bank, 24 Ala. 37; Settlemier *v.* Sullivan, 97 U. S. 444; Payne *v.* Young, 8 N.Y. 158; Fitch *v.* Pinckard, 5 Ill. 69; Steinbach *v.* Leese, 27 Cal. 295.

[3] See § 366, *ante*.

[4] Passmore *v.* Moore, 1 J. J. Marsh. (Ky.) 591; Godfrey *v.* Valentine, 39 Minn. 336; Ramsey *v.* Hommel, 68 Wis. 12; Lawlins *v.* Lackey, 6 Monr. (Ky.)70. Compare Feustmann *v.* Gott, 65 Mich. 592; Wood *v.* Knapp, 100 N. Y. 109; Lane *v.* Innes, 43 Minn. 137, S. C. 45 N. W. R. 4.

[5] Farmers' Nat. Bank *v.* Fonda, 65 Mich. 533; Hill *v.* Hoover, 5 Wis. 354; Cross *v.* Wilson, 52 Ark. 312, S. C. 12 S. W. R. 576; Brown *v.* Mahan, 4 J. J. Marsh. (Ky.) 59; Haywood *v.* Collins, 60 Ill. 328.

[6] See Cullum *v.* Branch Bank, 23 Ala. 797; Scorpion Silver Min. Co. *v.* Marsano, 10 Nev. 370.

[7] Batre *v.* Auze, 5 Ala. 173; Myric *v.* Adams, 4 Munf. (Va.) 366; McKey *v.* Cobb, 33 Miss. 533.

[8] Thompson *v.* Brannan, 76 Cal. 618, S. C. 18 Pac. R. 783; Mudge *v.* Steinhart, 78 Cal. 34, S. C. 20 Pac. R. 147; Van Aernam *v.* Winslow, 37 Minn. 514.

[9] Likens *v.* McCormick, 39 Wis. 313;

should show these facts, together with the date of mailing and any other facts required by statute to be therein stated.[1] Where the notice is required to be posted in a public place it becomes important to determine what is meant by the phrase "public place." It is a relative term, and does not necessarily have the same meaning in a statute providing for notice as it has in a criminal statute, requiring an act to be done in a public place in order to make it a crime.[2] Thus, it has been held that posting a notice on a court-house, although not on the front of it, is a sufficient compliance with a statute requiring the notice to be posted in a public place;[3] and a school-house, a church and a railroad depot have been held to be public places within the meaning of such a statute.[4] But it has been held that a shoemaker's shop is not a public place.[5]

§ 370. **Objections.**—Objections on account of irregularities or defects in the process or service should be made at the earliest opportunity.[6] The ordinary mode is to move to quash the writ or set aside the service, and a special appearance should be entered for that purpose.[7] If the return is defective a mo-

Beaupre *v.* Brigham, 79 Wis. 436, S. C. 48 N. W. R. 596; Smith *v.* Wells, 69 N. Y. 600; Paulling *v.* Creagh, 63 Ala. 398; Foley *v.* Connelly, 9 Iowa, 240; Aldige *v.* Knox, 16 La. Ann. 180. And postage prepaid. 4 Wait's Pr., 619, 620.

[1] Briggs *v.* Finn, 10 Iowa, 590; Trask *v.* Key, 4 Greene (Iowa), 372; Clark *v.* Adams, 33 Mich. 159; Rogers *v.* Rogers, 18 N. J. Eq. 445. The affidavit of the attorney for the plaintiff that he deposited a copy of the summons and complaint in the post-office is competent evidence thereof. Anderson *v.* Goff, 72 Cal. 65, S. C. 1 Am. St. R. 34.

[2] Cahoon *v.* Coe, 57 N. H. 556. "'A public place' is a relative term. What is a public place for one purpose is not for another. That is a public and proper place for setting up notices which is likely to give information to those interested and who may possibly become bidders at the sale." Cummins *v.* Little, 16 N. J. Eq. 48.

[3] Campbell *v.* Wheeler, 69 Iowa, 588.

[4] Wilson *v.* Bucknam, 71 Me. 545; Scammon *v.* Scammon, 28 N. H. 419; Russell *v.* Dyer, 40 N. H. 173; Territory *v.* Lannon, 9 Mont. 1. See, also, Goss *v.* Cardell, 53 Vt. 447; Austin *v.* Soule, 36 Vt. 645. We suppose a telegraph or telephone pole or the like on a much traveled street might also be a public place within the meaning of such a statute.

[5] Tidd *v.* Smith, 3 N. H. 178.

[6] Lawrence *v.* Jones, 15 Abb. Pr. (N. Y.) 110; Treftz *v.* Stahl (Ill. App.), 18 L. R. A. 500, 502; Elliott's App. Proc., §§ 182, 328, 329.

[7] Hust *v.* Conn, 12 Ind. 257; Cincinnati, H. & D. R. R. Co. *v.* Street, 50

tion to set aside the return should be made, stating the objections thereto.[1] A joint motion by several defendants to quash a summons is not well taken if it is good as to any of them.[2] Objections to process or service should specifically point out the defects complained of.[3] If the objection is founded upon extrinsic facts it should be raised by plea in abatement.[4]

§ 371. Waiver.—Jurisdiction of the person may be given by consent,[5] and objection to the process, or service on account of irregularities or defects may be waived by appearing and pleading to the merits or going to trial.[6] Objections not specifically made will be regarded as waived, notwithstanding the fact that other objections may have been duly stated.[7] Illus-

Ind. 225; Smith *v.* Hackley, 44 Mo. App. 614; McCulloch *v.* Ellis, 28 Ill. App. 439; Detroit First Nat. Bank *v.* Burch, 76 Mich. 608, S. C. 43 N.W. R. 453; Foster *v.* Markland, 37 Kan. 32, S. C. 14 Pac. R. 452.

[1] Hutchins *v.* Latimer, 5 Ind. 67; Campbell *v.* Swasey, 12 Ind. 70; Jeffersonville, M. & I. R. R. Co. *v.* Dunlap, 29 Ind. 426.

[2] Mansfield *v.* Shipp, 128 Ind. 55, S. C. 27 N. E. R. 427.

[3] Brown *v.* Goodyear, 29 Neb. 376, S. C. 45 N. W. R. 618; Kankakee Drainage Dist. *v.* Lake Fork Spec. Drainage Dist., 29 Ill. App. 86 (Reversed on other points in 130 Ill. 261); Hadley *v.* Gutridge, 58 Ind. 302.

[4] Greer *v.* Young, 120 Ill. 184, S. C. 11 N. E. R. 167; Cooke *v.* Gibbs, 3 Mass. 193; Guild *v.* Richardson, 6 Pick. 364; Duvall *v.* Craig, 2 Wheat. (U. S.) 55; Liliard's Ex'r *v.* Liliard's Ex'rs, 5 B. Mon. (Ky.) 340. This is the practice where the common law remains unchanged.

[5] Fields *v.* Walker, 23 Ala. 155; Hawkins *v.* Hughes, 87 N. Car. 115; Dicks *v.* Hatch, 10 Ia. 380; Andrews *v.* Wheaton, 23 Conn. 112; Cottrell *v.* Thompson, 15 N. J. L. 344; Elliott *v.* Lawhead, 43 Ohio St. 171, S. C. 1 N. E. R. 577; Union Pac. R'y Co. *v.* De Busk, 12 Col. 294, S. C. 13 Am. St. R. 221; Whyte *v.* Gibbes, 20 How. (U. S.) 541; Grimmett *v.* Askew, 48 Ark. 151; Brown *v.* Webber, 6 Cush. (Mass.) 560; McCormick *v.* Penna. Cent. R. R. Co., 49 N. Y. 303; Cofrode *v.* Gartner (Mich.), 7 L. R. A. 511.

[6] Fitzgerald & Mallory Constr. Co. *v.* Fitzgerald, 137 U. S. 98, S. C. 11 Sup. Ct. R. 36; Aultman *v.* Steinan, 8 Neb. 112; Meixell *v.* Kirkpatrick, 29 Kan. 679; Butts *v.* Screws, 95 N. Car. 215; People *v.* Haughton, 41 Hun (N. Y.), 558; Sears *v.* Starbird, 78 Cal. 225, S. C. 20 Pac. R. 547; Palmer *v.* Sanders (N. J.), 17 Atl. R. 1084; Meinhard *v.* Youngblood (S. Car.), 15 S. E. R. 950; McCormick Harvesting Mach. Co. *v.* Schneider (Neb.), 54 N. W. R. 257; Briggs *v.* Sneghan, 45 Ind. 14; Ryan *v.* Driscoll, 83 Ill. 415. So, by written acknowledgment of service. Earbee *v.* Ware, 9 Port. (Ala.) 291; Ayres *v.* Hill, 82 Ala. 401; Carter *v.* Penn, 79 Ga. 747; Jewett *v.* Miller, 19 Tex. 290; State *v.* Cohen, 13 S. Car. 198; Cheney *v.* Harding, 21 Neb. 68.

[7] Feibleman *v.* Edmonds, 69 Tex. 334, S. C. 6 S. W. R. 417.

trations of the rule, and instances of defects and irregularities deemed to have been waived will be found in another chapter.[1]

§ 372. **Return and proof of service.**—There is a sharp conflict among the authorities as to how far the return of an officer is conclusive; but the weight of authority seems to be to the effect that as between third persons and in favor of the officer, where he is a party, it is simply *prima facie* evidence of the service,[2] while as between the parties to the action and their privies it is generally regarded as conclusive and can not be collaterally impeached.[3] But, as already shown, a return may be amended, in a proper case,[4] and it is the fact of service and not merely the proof thereof that gives jurisdiction.[5] And there are cases in which it is held that the sheriff's return may be contradicted,[6] especially where fraud is shown.[7] So, in a recent case, it is held by the Supreme Court of Michigan that

[1] See Vol. 2, Ch. I.

[2] Chadbourne *v.* Sumner, 16 N. H. 129, S. C. 41 Am. Dec. 720; Nichols *v.* Patten, 18 Me. 231, S. C. 36 Am. Dec. 713; Bruce *v.* Holden, 21 Pick. (Mass.) 187; Sias *v.* Badger, 6 N. H. 393; Gyfford *v.* Woodgate, 11 East, 297; Hensley *v.* Rose, 76 Ala. 373.

[3] McGeorge *v.* Harrison, etc., Co., 141 Pa. St. 575, S. C. 21 Atl. R. 671; Green *v.* Kindy, 43 Mich. 279; Stewart *v.* Griswold, 134 Mass. 391; Chadbourne *v.* Sumner, 16 N. H. 129, S. C. 41 Am. Dec. 720; Nichols *v.* Nichols, 96 Ind. 433; Splahn *v.* Gillespie, 48 Ind. 397; Cully *v.* Shirk, 131 Ind. 76, S. C. 30 N. E. R. 882; Rowell *v.* Klein, 44 Ind. 290; Bennethum *v.* Bowers, 133 Pa. St. 332, S. C. 19 Atl. R. 361; Johnson *v.* Jones, 2 Neb. 126; Rader *v.* Adamson, 37 W. Va. 582, S. C. 16 S. E. R. 808; Thomas *v.* Ireland, 88 Ky. 581, S. C. 21 Am. St. R. 356; Studebaker *v.* Johnson, 41 Kan. 326, S. C. 13 Am. St. R. 287, and note. So, it is conclusive against the officer. Splahn *v.* Gillespie, 48 Ind. 397; Blue *v.* Commonwealth, 2 J. J. Marsh. (Ky.) 26; Hensley *v.* Rose, 76 Ala. 373; Duncan *v.* Gerdine, 59 Miss. 550; Winnebago Co. *v.* Brones, 68 Iowa, 682. Compare Decker *v.* Armstrong, 87 Mo. 316.

[4] *Ante*, § 355; 1 Freeman on Judgments, § 89*b*; Murfree on Sheriffs, § 868.

[5] See White *v.* Hinton, 3 Wyo. 753, S. C. 17 L. R. A. 66, 70, and criticism of Mr. Freeman on the opinion in the case of Reinhart *v.* Lugo, 21 Am. St. R. 52, 56.

[6] Gadwin *v.* Monds, 106 N. Car. 448, S. C. 10 S. E. R. 1044; Wilson *v.* Shipman, 34 Neb. 573, S. C. 52 N. W. R. 576; Forrest *v.* Union Pac. R. R. Co., 47 Fed. R. 1; Wheeler & W. Mfg. Co. *v.* McLaughlin, 28 N. Y. S. R. 372; Pollard *v.* Wegener, 13 Wis. 572, 578; Dasher *v.* Dasher, 47 Ga. 320; Bond *v.* Wilson, 8 Kan. 228; Knowles *v.* Gaslight, etc., Co., 19 Wall. (U. S.) 58.

[7] Dobbins *v.* McNamara, 113 Ind. 54, S. C. 14 N. E. R. 887; Nietert *v.* Trentman, 104 Ind. 390, S. C. 4 N. E. R. 306.

a return of personal service by a private person is open to contradiction.[1] The return should be in writing, but where it has been lost proof of the service may be made by parol evidence,[2] and it has also been held that where it is defective it may be aided, in order to prevent a failure of justice, by other proof of the service.[3] The return should be signed by the officer making it, and if by deputy, he should sign it in the name of his principal by himself as deputy.[4] It should state the facts showing the person served and the time and manner of service, together with any other matters required by statute.[5] Where the court appoints a special deputy or elisor to serve the process, he makes the return in his own name.[6] In some jurisdictions service and proof thereof may also be made by private persons, not acting in any official capacity. In such case the return should be verified by the affidavit of the person who made the service.[7] It is also provided by statute in some of

[1] Detroit Free Press Co. *v.* Bagg, 78 Mich. 650, S. C. 44 N. W. R. 149.

[2] Bridges *v.* Arnold, 37 Ia. 221.

[3] Kipp *v.* Fullerton, 4 Minn. 473; Smith *v.* Pattison, 45 Miss. 619.

[4] Rowley *v.* Howard, 23 Cal. 401; Reinhart *v.* Lugo, 86 Cal. 395, S. C. 24 Pac. R. 1089; Bolard *v.* Mason, 66 Pa. St. 138; Glencoe *v.* People, 78 Ill. 382; Murfree on Sheriffs, § 836. See Martin *v.* Aultman, 80 Wis. 150, S. C. 49 N. W. R. 749; Johnson *v.* Johnson, 23 Fla. 413, S. C. 2 So. R. 834; Gibbens *v.* Pickett, 31 Fla. 147, S. C. 12 So. R. 17; Martin *v.* Gray, 142 U. S. 236.

[5] Hodges *v.* Brett, 4 Green (Ia.), 345; Bendy *v.* Boyce, 37 Tex. 443; Williams *v.* Downes, 30 Tex. 51; Fisher *v.* Fredericks, 33 Mo. 612; Smith *v.* Rollins, 25 Mo. 408; Botsford *v.* O'Connor, 57 Ill. 72; Hochlander *v.* Hochlander, 73 Ill. 618; Dawson *v.* State Bank, 3 Ark. 505; Merritt *v.* White, 37 Miss. 438; Woodliffe *v.* Connor, 45 Miss. 552; Sayles *v.* Davis, 20 Wis. 302; Pollard *v.* Wegener, 13 Wis. 569; Richmond *v.* Brookings, 48 Fed. R. 241; Rutherford *v.* Davenport, Texas Ct. of App., C. C., 417, S. C. 16 S.W. R. 110; Laney *v.* Garbee, 105 Mo. 355, S. C. 16 S. W. R. 831; Robbins *v.* Clemmens, 41 Ohio St. 285; Crisman *v.* Swisher, 28 N. J. L. 149; Perry *v.* Dover, 12 Pick. (Mass.) 206. But if it shows that the statute has been complied with in all material respects, it ought not to be held bad on a mere technicality, such as the failure to use the exact language of the statute, or the like. Collins *v.* Walling, 6 La. Ann. 702; Presley *v.* Anderson, 42 Miss. 274; Holsinger *v.* Dunham, 11 Ind. 346; Rees *v.* Rees, 7 Ore. 78; Foster *v.* Berry, 14 R. I. 601; Betts *v.* Boyd, 31 Neb. 815; Murfree on Sheriffs, § 846.

[6] Glencoe *v.* People, 78 Ill. 382. In Nebraska, return by special deputy must be made under oath. Forbes *v.* Bringe, 32 Neb. 757, S. C. 49 N. W. R. 720.

[7] Coffee *v.* Gates, 28 Ark. 43; State Bank *v.* Marsh, 10 Ark. 129; Estate of Robinson, 6 Mich. 137; Forbes *v.* Bringe, 32 Neb. 757, S. C. 49 N. W. R.

the States that a written acknowledgment of the defendant on the back of the summons shall be sufficient proof of service.[1] Other matters relating to the return and proof of service are sufficiently considered elsewhere.[2]

§ 373. **Privilege—Exemption from service of process.**—At common law a witness or suitor while attending court and during a reasonable time in going and returning is privileged from arrest in ordinary cases,[3] and, while the authorities are conflicting as to the existence and extent of their privilege from service of process at common law, the rule now established in most jurisdictions, either by statute or judicial decision is that a non-resident, at least, who comes into a State as a witness or party to a suit is exempt from the service of process while attending court and while traveling to and from the court, so long as there is no unreasonable delay upon his part.[4] Even if jurisdiction can, in any sense, be obtained by

720; German Mut. Fire Ins. Co. *v.* Decker, 74 Wis. 556, S. C. 43 N. W. R. 500; Yolo County *v.* Knight, 70 Cal. 431.

[1] McCormack *v.* First Nat. Bank, 53 Ind. 466, 470; Cheney *v.* Harding, 21 Neb. 65; Hendrix *v.* Cawthorn, 71 Ga. 742; Montgomery *v.* Tutt, 11 Cal. 307; Segars *v.* Segars, 76 Me. 96; Jewett *v.* Miller, 19 Tex. 290.

[2] See, in regard to amending the returns in regard to proof of service by publication, § 368; and as to return day, § 353.

[3] 3 Blk. Com. (Cooley's ed.) § 289, and note; *In re* Healey, 38 Am. R. 713, and note; Jones *v.* Knauss, 31 N. J. Eq. 211, and note; Wilson *v.* Donaldson, 117 Ind. 356, S. C. 3 L. R. A. 266, and note. Many other authorities might be cited in support of this proposition, but, as most of them are collected and reviewed in each of the cases and notes above referred to, it would be useless to repeat them here.

[4] *In re* Healey, 53 Vt. 694, S. C. 38 Am. R. 713; Parker *v.* Marco, 136 N. Y. 585 (containing an elaborate review of the authorities); Halsey *v.* Stewart, 4 N. J. L. 366; Massey *v.* Colville, 45 N. J. L. 119, S. C. 46 Am. R. 754; Bolgiano *v.* Gilbert Lock Co., 73 Md. 132, S. C. 20 Atl. R. 788, S. C. 25 Am. St. R. 582; Mulhearn *v.* Press Pub. Co., 53 N. J. L. 153, S. C. 11 L. R. A. 101; Wilson *v.* Donaldson, 117 Ind. 356, S. C. 3 L. R. A. 266, and note; Sherman *v.* Gundlach, 37 Minn. 118; Shaver *v.* Letherby, 73 Mich. 500, S. C. 41 N.W. R. 677; Andrews *v.* Lembeck, 46 Ohio St. 38, S. C. 18 N. E. R. 483; Thompson's Case, 122 Mass. 428; Thornton *v.* Am. Writing Mach. Co., 83 Ga. 288, S. C. 20 Am. St. R. 320; Kauffman *v.* Kennedy, 25 Fed. R. 785. But, see Christian *v.* Williams, 111 Mo. 429, S. C. 20 S. W. R. 96. In Greer *v.* Young, 120 Ill. 184, it is held that one who goes into another jurisdiction merely to take depositions is not exempt. Compare, however, Finch *v.* Galligher, 12 N. Y. Sup. 487.

service of summons upon such a person in a civil action, the service will at least be set aside on application.[1] So, where service is obtained by abuse of criminal process or fraud.[2]

§ 374. **Capias ad respondendum.**—At common law the writ of *capias ad respondendum*, whereby the appearance of the defendant was enforced by "arrest of his person," was first used merely as mesne process after the defendant had failed to appear in response to the original writ, but it soon became the original writ by which civil actions were begun whenever the right to arrest the defendant existed.[3] Since imprisonment for debt was abolished it has been little used. In some of the States, however, it is still used in cases where the defendant is a fraudulent debtor or is attempting to defraud the plaintiff, to whom he is indebted, by leaving the State and taking his property with him. An affidavit stating the facts is usually required before the writ will issue.[4] As the right and manner of instituting an action in this way are regulated by statute, which should be strictly followed, and as it is seldom resorted to, no further consideration of the subject is necessary in this connection.

§ 375. **Process on cross-bill and supplemental complaint.**—As a general rule, a new summons must be issued and service thereof duly made where a cross-bill or complaint is filed stat-

[1] Fitzgerald & Mallory Constr. Co. *v.* Fitzgerald, 137 U. S. 98, S. C. 11 Sup. Ct. R. 36, 38; Bolgiano *v.* Gilbert Lock Co., 73 Md. 132, S. C. 25 Am. St. R. 582; Mitchell *v.* Huron Circuit Judge, 53 Mich. 541.

[2] Christian *v.* Williams, 111 Mo. 429, S. C. 20 S. W. R. 96; Van Horn *v.* Great Western Mfg. Co., 37 Kan. 523; Byler *v.* Jones, 22 Mo. App. 623; Chubbuck *v.* Cleveland, 37 Minn. 466, S. C. 5 Am. St. R. 864; Townsend *v.* Smith, 47 Wis. 623, S. C. 32 Am. R. 793; Steele *v.* Bates, 2 Aik. (Vt.) 338, S. C. 16 Am. Dec. 720, and note; Williams *v.* Reed, 29 N. J. L. 385; Palmer *v.* Rowan, 21 Neb. 452, S. C. 59 Am. R. 844; Benninghoff *v.* Oswell, 37 How. Pr. (N. Y.) 235; Compton *v.* Wilder, 40 Ohio St. 130; Wood *v.* Wood, 78 Ky. 624; Baker *v.* Wales, 45 How. Pr. (N. Y.) 137; Duringer *v.* Moschino, 93 Ind. 495.

[3] See Steph. Pl. 22; 2 Am. & Eng. Encyc. Law, 724.

[4] See Gates *v.* Bloom, 149 Pa. St. 107, S. C. 24 Atl. R. 184; Burrichter *v.* Cline, 3 Wash. 135, S. C. 28 Pac. R. 367; *Re* Vinich, 86 Cal. 70, S. C. 26 Pac. R. 528; Paul *v.* Ward, 21 Ind. 211.

ing a new cause of action,[1] and the same rule holds good as to new parties where a supplemental complaint is filed.[2] So, where the supplemental complaint alleges that one of the original defendants has acquired a new interest since the filing of the original complaint, it has been held that a new summons must be issued and served on such defendant in order to bind his after-acquired interest;[3] but this decision was rendered by a divided court, and its soundness may well be doubted. Under the Illinois statute the cross-bill is regarded as a mere adjunct or continuation of the original suit and new process is held to be unnecessary.[4]

§ 376. **Alias and pluries writs.**—Where process is returned without service for the reason that the defendant can not be found in the bailiwick of the officer to whom it is issued, and the plaintiff has reason to believe that by a second or other writ to the same or a different county he will be able to obtain service upon the defendant, an *alias* or *pluries* writ may be obtained and issued for that purpose. The second writ is called an *alias* writ and any others of the same kind thereafter issued are called *pluries* writs. In some jurisdictions the plaintiff is entitled to an *alias* writ as a matter of right, and the clerk issues it as a matter of course;[5] but in other States the clerk has no authority to issue *alias* or *pluries* writs without leave of court, and it is safer in all cases to obtain an order

[1] Boyd *v.* Fitch, 71 Ind. 306; Hunter *v.* Burnsville Turnp. Co., 56 Ind. 213; Ballance *v.* Underhill, 3 Scam. (Ill.) 453, 461; Swift *v.* Brumfield, 76 Ind. 472; Fletcher *v.* Holmes, 25 Ind. 458. See, also, Lowenstein *v.* Glidewell, 5 Dill (U. S.), 325, 328; Heath *v.* Erie R'y Co., 9 Blatchf. (U. S.) 316. Not necessary where the original complaint fully discloses the claim set up in the cross-complaint. Bevier *v.* Kahn, 111 Ind. 200.

[2] See Shaw *v.* Bill, 95 U. S. 10, 14; Morgan *v.* Morgan, 10 Ga. 297; Daniell's Ch. Pr. (2d Am. ed.), 1680. See, also, Kentucky Eclectic Inst. *v.* Gaines (Ky.), 1 S. W. R. 444; Rigney *v.* Rigney, 127 N. Y. 408, S. C. 24 Am. St. R. 462.

[3] Martin *v.* Noble, 29 Ind. 216. This is certainly not the law where the new interest is acquired by purchase *pendente lite*. See Shaw *v.* Bill, 95 U. S. 10.

[4] Fleece *v.* Russell, 13 Ill. 31; Kingsbury *v.* Buckner, 134 U. S. 650, S. C. 10 Sup. Ct. R. 638.

[5] Cherry *v.* Mississippi Ins. Co., 16 Lea (Tenn.), 292; Gilmour *v.* Ford (Tex.), 19 S. W. R. 442.

of court for the issuance of the writ.[1] An *alias* writ is unnecessary where a complaint is amended after service, but no new cause of action is stated,[2] although the contrary has been held where the complaint as amended stated a new cause of action.[3] Where the original summons correctly states the amount of the plaintiff's claim a clerical error in the *alias* in stating the amount will not render the proceedings subject to collateral attack.[4]

[1] Peck *v.* La Roche, 86 Ga. 314, S. C. 12 S. E. R. 638.

[2] Schuyler Nat. Bank *v.* Bollong, 28 Neb. 684, S. C. 45 N. W. R. 164.

[3] Kentucky Eclectic Inst. *v.* Gaines (Ky.), 1 S. W. R. 444.

[4] Richmond & D. R. R. Co. *v.* Rudd, 88 Va. 648, S. C. 14 S. E. R. 361.

CHAPTER XI.

AUXILIARY PROCEEDINGS.

§ 377. Kinds and purpose.
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§ 377. **Kinds and purpose.**—It frequently happens that an ordinary action instituted by filing a complaint and issuing summons would be ineffective without the aid of some further proceeding. The defendant may be a non-resident, or he may be removing from the State; he may fraudulently secrete or dispose of his property if some step is not immediately taken to prevent him from so doing; it may be necessary to place the property *in custodia legis* in order to preserve it during litigation; it may be necessary to enjoin or restrain the defendant from doing some act that would prevent the plaintiff from obtaining redress in an action at law; it may be necessary to give notice of the pendency of the action in order to prevent innocent third persons from acquiring rights which might otherwise be superior to those of the plaintiff, or the like; and in many such cases something more than the ordinary process of the court is essential in order to secure complete justice to the plaintiff. This end is usually accomplished by certain proceedings or writs fitted to the particular case, which are, in their nature, auxiliary or ancillary to the main action. The most important are attachment and garnishment, the writs of

capias and *ne exeat*, injunctions, proceedings for the appointment of a receiver and *lis pendens* notices.

§ 378. **Attachment—Generally.**—Attachment is a statutory remedy or proceeding,[1] and, as the statutes in the different States differ greatly in regard to details the advocate must consult the statute and decisions of his own State in order to determine the specific grounds for attachment and the proper procedure, but the general principles underlying the proceeding and the general method of procedure are substantially the same in nearly all jurisdictions. It has been defined as "a provisional remedy whereby a debtor's property, real or personal, or any interest therein capable of being taken under a levy and execution, is placed in the custody of the law to secure the interests of the creditor pending the determination of the cause."[2] It partakes largely of the elements of proceedings *in rem* as well as of those of actions *in personam* and is sometimes called a proceeding in the nature of an action *in rem*. It is, however, personal in form and is usually preceded or accompanied by a summons, but it is auxiliary or ancillary to the main action and binds only the property attached, although a personal judgment may be taken in the main action, where the defendant has been personally served. If, in such a case, no property is found, the action may proceed as a personal action,[3] and so it may be stated generally that where the defendant has been personally served the attachment proceeding may be dismissed and the personal action prosecuted to judgment, notwithstanding such dismissal.[4] But if the defendant is a nonresident and does not appear no valid and effective personal judgment can be rendered against him,[5] and neither can a

[1] The statute should be strictly construed and is not to be extended by implication. May *v.* Baker, 15 Ill. 89; Johnson *v.* Johnson, 31 Fed. R. 700; Ketchin *v.* Landecker, 32 So. Car. 155; Denegre *v.* Milne, 10 La. Ann. 324; Caldwell *v.* Haley, 3 Texas, 317; Pool *v.* Webster, 3 Metc. (Ky.) 278; Wade on Attachment, §§ 2, 3.

[2] 1 Am. & Eng. Ency. of Law, 894. See, also, Lowry *v.* Cady, 4 Vt. 504, S. C. 24 Am. Dec. 628.

[3] Drake on Attachment, § 5.

[4] Erwin *v.* Heath, 50 Miss. 795; Miller *v.* Ewing, 8 Sm. & M. 421; Hendrix *v.* Cawthorn, 71 Ga. 742.

[5] Eastman *v.* Wadleigh, 65 Me. 251, S. C. 20 Am. Rep. 695; Eliot *v.* Mc-

judgment for the sale of the property attached be rendered where the cause of action is one in which an attachment is not authorized.[1] So far as the property itself is concerned, however, jurisdiction is generally obtained, in case of a non-resident, by complying with the statute and giving notice by publication.[2] But if no property is found, and no personal service is had, no judgment can be rendered against a non-resident defendant who does not appear.[3]

§ 379. **When attachment will lie.**—As a general rule attachment will not lie in actions *ex delicto*,[4] and this is true although the tort might have been waived and an action brought for breach of contract.[5] But the mere fact that a tort is committed in connection with a breach of contract will not necessarily prevent an action for the breach of contract and an attachment in aid thereof. If the tort is waived and an action is properly brought for breach of the contract, express or implied, a writ of attachment will issue upon a proper showing and compliance with the statute.[6] In some jurisdictions attachment will not lie unless the action is for liquidated damages arising from breach of contract, and the debt must be an actually subsisting

Cormick, 144 Mass. 10; King *v.* Vance, 46 Ind. 246; Banta *v.* Wood, 32 Iowa, 469; Webster *v.* Reid, 11 How. 437; Robinson *v.* Ward, 8 Johns. (N. Y.) 86, S. C. 5 Am. Dec. 327; Eastman *v.* Dearborn, 63 N. H. 364; Wade on Attachment, § 267; *ante*, § 243.

[1] Mudge *v.* Steinhart, 78 Cal. 34, S. C. 12 Am. St. R. 17.

[2] King *v.* Vance, 46 Ind. 246; note to Cousins *v.* Alworth, 10 L. R. A. 504; Wade on Attachment, § 267, *et seq.*; *ante*, § 243.

[3] Cooper *v.* Reynolds, 10 Wall. 308; Pennoyer *v.* Neff, 95 U. S. 714; Bruce *v.* Cloutman, 45 N. H. 37; Abbott *v.* Sheppard, 44 Mo. 273; Clymore *v.* Williams, 77 Ill. 618; Cooper *v.* Smith, 25 Iowa, 269.

[4] Griswold *v.* Sharpe, 2 Cal. 17; Mudge *v.* Steinhart, 78 Cal. 34, S. C. 12 Am. St. R. 17; Babcock *v.* Briggs, 52 Cal. 502; Ferris *v.* Ferris, 25 Vt. 100; Crossman *v.* Lindsley, 42 How. Pr. (N. Y.) 107; Porter *v.* Hildebrand, 14 Pa. St. 129; Raver *v.* Webster, 3 Ia. 502; Hynson *v.* Taylor, 3 Ark. 552; Stanley *v.* Sutherland, 54 Ind. 339; Drake on Attachment, § 10. But, under some of the statutes, it seems that the writ may issue in an action *ex delicto*. Sturdevant *v.* Tuttle, 22 Ohio St. 111; Creasser *v.* Young, 31 Ohio St. 57; Tahoe *v.* Mining Co., 14 Fed. R. 636.

[5] Wade on Attachment, § 12; Atlantic, etc., Ins. Co. *v.* McLoon, 48 Barb. (N. Y.) 27.

[6] Fuel Co. *v.* Tuck, 53 Cal. 304; Hunt *v.* Norris, 4 Mart. (La.) 517;

debt and not a mere contingent and uncertain liability.[1] It is sometimes provided, however, that the debt need not be actually due at the time of the application for a writ of attachment.[2]

§ 380. **Grounds of attachment.**—Mere insolvency or inability of a debtor to pay his debts is not sufficient to authorize the attachment of his property.[3] As a general rule it is authorized only where ordinary process is ineffective, and some one or more of the statutory causes must exist. It is usually authorized where a debtor absents himself[4] or absconds from the State,[5] where he conceals himself,[6] where he is a non-resident,[7] where he is removing, or about to remove, his property from the State,[8] where he is fraudulently disposing of his pro-

Penna. R. R. Co. *v.* Peoples, 31 Ohio St. 537; Wade on Attachment, § 22.

[1] Taylor *v.* Drane, 13 La. 62; Harrod *v.* Burgess, 5 Rob. (La.) 449; Benson *v.* Campbell, 6 Port. (Ala.) 455. See, also, Tignor *v.* Bradley, 32 Ark. 781; Henderson *v.* Thornton, 37 Miss. 448, S. C. 75 Am. Dec. 70.

[2] Drake on Attachment, § 31, *et seq.*

[3] Parmer *v.* Keith, 16 Neb. 91.

[4] This does not mean a mere temporary absence, but it must be such as prevents the service of process or otherwise shows an intention to delay or injure the creditor. Fuller *v.* Bryan, 20 Pa. St. 144; Morgan *v.* Avery, 7 Barb. (N. Y.) 656; Kingsland *v.* Worsham, 15 Mo. 657; Watson *v.* Pierpoint, 7 Mart. (La.) 413; Mandel *v.* Peet, 18 Ark. 236.

[5] As to who is an absconding debtor, see Bennett *v.* Avant, 2 Sneed (Tenn.), 152; Stouffer *v.* Niple, 40 Md. 477; Ives *v.* Curtiss, 2 Root, 133; Boardman *v.* Bickford, 2 Aik. (Vt.) 345.

[6] As to what is concealment within the meaning of the statute, see Young *v.* Nelson, 25 Ill. 565; Evans *v.* Saul, 8 Mart. N. S. (La.) 247; North *v.* McDonald, 1 Biss. 57; Wolcott *v.* Hendrick, 6 Tex. 406; Winkler *v.* Barthel, 6 Bradw. (Ill.) 111.

[7] As to who are non-residents within the meaning of the statute, see *In re* Wrigley, 8 Wend. (N. Y.) 134; Brown *v.* Ashbough, 40 How. Pr. (N. Y.) 260; Moore *v.* Holt, 10 Gratt. (Va.) 284; Morgan *v.* Nunes, 54 Miss. 308; Haggart *v.* Morgan, 5 N. Y. 422, S. C. 55 Am. Dec. 350; Wheeler *v.* Cobb, 75 N. Car. 21; Carden *v.* Carden, 107 N. Car. 214, S. C. 22 Am. St. R. 876, and note; Hanson *v.* Graham, 82 Cal. 631, S. C. 7 L. R. A. 127; note to Cousins *v.* Alworth, 10 L. R. A. 504; Munroe *v.* Williams, 19 L. R. A. 665, and note; Wallace *v.* Castle, 68 N. Y. 370; Perrine *v.* Evans, 35 N. J. L. 221; Rayne *v.* Taylor, 10 La. Ann. 726. But "residence" and "domicile" are not synonymous, and if the debtor has a residence in the jurisdiction so that he can be served with process, his property can not be attached on the ground of non-residence. Stout *v.* Leonard, 37 N. J. L. 492; Wells *v.* People, 44 Ill. 40; Waples on Attachment, 36; Drake on Attachment, § 58.

[8] See Warder *v.* Thrilkeld, 52 Ia. 134;

perty, or about to do so,[1] and, in some States, where the debt has been fraudulently contracted.[2]

§ 381. **Procedure in attachment.**—It is a universal requirement that before a writ of attachment shall be issued the plaintiff must show by affidavit the existence of one or more of the statutory grounds. This is generally held to be jurisdictional.[3] But it has been held that a verified complaint containing all that would be required in an affidavit may be so drawn as to serve the purposes both of a complaint and an affidavit.[4] And an affidavit which is defective in some respects may, nevertheless, be sufficient to support the proceedings as against a collateral attack.[5] The requisites of the affidavit are usually prescribed by statute, and it is not necessary to attempt to consider them here. It is sufficient to say that the affidavit should comply with the statutory requirements.[6] In addition

Rice *v.* Pertuis, 40 Ark. 157; Russell *v.* Wilson, 18 La. 367; White *v.* Wilson, 10 Ill. 21; Friedlander *v.* Pollock, 5 Cold. (Tenn.) 490; Hunter *v.* Soward, 15 Neb. 215; Durr *v.* Hervey, 44 Ark. 301, S. C. 51 Am. R. 594; Myers *v.* Farrell, 47 Miss. 281; Simon *v.* Sevier Co., etc., Ass'n (Ark.), 14 S. W. R. 1101; Lowenstein *v.* Bew, 68 Miss. 265, S. C. 24 Am. St. R. 269, and note.

[1] See Spencer *v.* Deagle, 34 Mo. 455; Chouteau *v.* Sherman, 11 Mo. 385; Taylor *v.* Kuhuke, 26 Kan. 132; Rosenfeld *v.* Howard, 15 Barb. (N. Y.) 546; Donnell *v.* Jones, 17 Ala. 689, S. C. 52 Am. Dec. 194; Bullene *v.* Smith, 73 Mo. 151; Hernsheim *v.* Levy, 32 La. Ann. 340; Robinson Notion Co. *v.* Ormsby, 33 Neb. 655, S. C. 50 N. W. R. 952; Orr, etc., Shoe Co. *v.* Harris, 82 Tex. 273, S. C. 18 S. W. R. 308; Crow *v.* Lemon, etc., Co., 69 Miss. 799, 11 So. R. 110.

[2] Marqueze *v.* Sontheimer, 59 Miss. 430; Wachter *v.* Famachon, 62 Wis. 117; Rosenthal *v.* Wehe, 58 Wis. 621; Young *v.* Cooper, 12 Neb. 610; Sturdevant *v.* Tuttle, 22 Ohio St. 111; Ellison *v.* Bernstein, 60 How. Pr. (N. Y.) 145; Mackey *v.* Hyatt, 42 Mo. App. 443.

[3] Earl *v.* Camp, 16 Wend. (N. Y.) 562; Staples *v.* Fairchild, 3 N. Y. 41; Hargadine *v.* Van Horn, 72 Mo. 370; Matthews *v.* Densmore, 43 Mich. 461.

[4] Dunn *v.* Crocker, 22 Ind. 324; Miller *v.* Chandler, 29 La. Ann. 88. See, also, Fremont *v.* Fulton, 103 Ind. 393; Eudel *v.* Leibrock, 33 Ohio St. 254; Scott *v.* Doneghy, 17 B. Mon. (Ky.) 321; Shaffer *v.* Sandwall, 33 Ia. 579.

[5] Weber *v.* Weitling, 3 (C. E. Green), N. J. Eq. 441; Russell *v.* Work, 35 N. J. L. 316; Moresi *v.* Swift, 15 Nev. 215; Hardin *v.* Lee, 51 Mo. 241; Crowell *v.* Johnson, 2 Neb. 146; Boothe *v.* Estes, 16 Ark. 104.

[6] Shockley *v.* Bulloch, 18 Ga. 283; Lamkin *v.* Douglass, 27 Hun (N. Y.), 517; Miller *v.* Brinkerhoff, 4 Denio (N. Y.), 118, S. C. 47 Am. Dec. 242; Emmitt *v.* Yeigh, 12 Ohio St. 335; Rey-

to the affidavit the plaintiff is generally required to execute a bond as a preliminary to the issuance of the writ, and it has been held that a deposit of money can not be made in lieu of the statutory bond.[1] The bond is ordinarily required to be conditioned that the plaintiff shall prosecute the suit to effect and pay all costs and damages occasioned by the wrongful suing out of the attachment; but whatever the form may be it should, at least, substantially follow the statute.[2] In some States an agent or attorney may execute the bond and affidavit, in others they must be executed by the plaintiff.[3] The sureties should reside within the jurisdiction of the court which grants the writ. In some jurisdictions the bond should be made to the State as obligee, but in most jurisdictions the defendant is the obligee. The amount of the bond is regulated by statute, and a greater amount than that prescribed will do no harm,[4] but a less sum may be fatal.[5] The statutory preliminaries having been complied with, the writ issues.

§ 382. **Filing under attachment.**—It is sometimes provided that any creditor, upon filing his affidavit and bond, as required of the attaching creditor, may, at any time before final judgment, make himself a party and become entitled to share in the proceeds by also filing his complaint and proving his claim.[6] And when this has been done it has been held that the dismissal of the original proceeding will not affect the claim filed thereunder.[7] It has also been held that no additional

burn *v.* Brackett, 2 Kan. 227, S. C. 83 Am. Dec. 457; McCollem *v.* White, 23 Ind. 43; Delaplain *v.* Armstrong, 21 W. Va. 211; Biddle *v.* Black, 99 Pa. St. 380.

[1] Bate *v.* McDowell, 48 N. Y. Sup. Ct. 219.

[2] Bank *v.* Fitzpatrick, 4 Humph. (Tenn.) 311; Love *v.* Fairfield, 10 Ill. 303; Wade on Attachment, § 103, *et seq.*

[3] Wade on Attachment, §§ 105, 106; Best *v.* Johnson, 12 Am. St. R. 41, and note.

[4] Fellows *v.* Miller, 8 Blackf. (Ind.) 231; Bourne *v.* Hocher, 11 B. Mon. (Ky.) 23; Shockley *v.* Davis, 17 Ga. 177, S. C. 63 Am. Dec. 233.

[5] Marnine *v.* Murphy, 8 Ind. 272; Martin *v.* Thompson, 3 Bibb. (Ky.) 252.

[6] As to what is required, and the sufficiency of the pleading, see, generally, Gilly *v.* Breckenridge, 2 Blackf. (Ind.) 100; Sturgis *v.* Rogers, 26 Ind. 1; Cooper *v.* Metzger, 74 Ind. 544.

[7] Ryan *v.* Burkam, 42 Ind. 507; State *v.* Baldwin, 10 Biss. C. C. 165.

summons or writ of attachment need be issued on such claim.[1] The lien of the claim so filed relates back to the time of the lien of the original attachment,[2] and the proceeds of the sale of the property are distributed *pro rata* among the creditors whose claims have been allowed.[3] But, in the absence of such a statute, attaching creditors take rank and are entitled to satisfaction according to the dates of the service of their attachments,[4] and where the first attachment has been levied the goods in the custody of the officer can not be seized by another officer upon a subsequent writ.[5]

§ 383. **Property subject to attachment.**—As a general rule any property subject to execution may be attached.[6] This, of course, includes real estate[7] as well as personal property. But in either case the attachment only operates upon the interest of the debtor at the time of the attachment.[8] So, it has been held, where property is perishable or of such a nature that an attachment would result in producing a great sacrifice and injury to the debtor without any corresponding benefit to the creditor the writ should be refused.[9] And property already *in custodia legis* can not be attached.[10]

[1] Schmidt *v.* Colley, 29 Ind. 120; Taylor *v.* Elliott, 51 Ind. 375.

[2] Fee *v.* Moore, 74 Ind. 319; Ryan *v.* Burkam, 42 Ind. 507.

[3] Compton *v.* Crone, 58 Ind. 106; Lexington, etc., Co. *v.* Ford Plate Glass Co., 84 Ind. 516.

[4] Tappan *v.* Harrison, 2 Humph. (Tenn.) 172; Murray *v.* Gibson, 2 La. Ann. 311; Ginsberg *v.* Pohl, 35 Md. 505; De Wolf *v.* Murphy, 11 R. I. 630; Hagan *v.* Lucas, 10 Pet. (U. S.) 400; Altas Bank *v.* Nahant Bank, 23 Pick. 480; Patterson *v.* Stephenson, 77 Mo. 329.

[5] Vinton *v.* Bradford, 13 Mass. 114, S. C. 7 Am. Dec. 119; Beers *v.* Place, 36 Conn. 578; Corning *v.* Dreyfur, 20 Fed. R. 426.

[6] Drake on Attachment, §§ 2, 232, 263; Wade on Attachment, §§ 249, 261; Roby *v.* Labuzan, 21 Ala. 60, S. C. 56 Am. Dec. 237. Property exempt from execution can not be attached. Emerson *v.* Bacon, 58 Mich. 526. But property not exempt when attached can not be rendered so by the debtor's subsequently disposing of his other property. Kilpatrick, etc., Co. *v.* Callender (Neb.), 52 N. W. R. 403.

[7] Isham *v.* Downer, 8 Conn. 282; Munroe *v.* Luke, 19 Pick. (Mass.) 39; Argyle *v.* Dwinel, 29 Me. 29.

[8] Drake on Attachment, § 245; Wade on Attachment, § 264; Crocker *v.* Pierce, 31 Me. 177; Handley *v.* Pfister, 39 Cal. 283, S. C. 2 Am. R. 449.

[9] Wallace *v.* Barker, 8 Vt. 440; Oystead *v.* Shed, 12 Mass. 506; Bradford *v.* Gillespie, 8 Dana (Ky.), 67; Norris *v.* Watson, 2 Foster (N. H.), 364; Bond *v.* Ward, 7 Mass. 123.

[10] Taylor *v.* Carryl, 24 Pa. St. 259; Drake on Attachment, § 281. Com-

§ 384. **Lien of attachment.**—Although the attachment is, in a sense at least, merely provisional and contingent upon the recovery of judgment in the main action, yet, according to the weight of authority, a lien may be acquired before judgment.[1] In order to secure it, however, it is not sufficient that a writ of attachment shall have been issued or even placed in the hands of the proper officer; the writ must be actually levied upon the property of the debtor.[2] Where property is attached and sold under a judgment the title of the purchaser relates to the date of the attachment.[3] When the lien has once been acquired it can be lost or destroyed only by dissolution of the attachment.[4] This is the rule, at least, as against the defendant; but it has been held that subsequent purchasers in good faith, and, it seems, other creditors, may obtain rights where possession of the property is abandoned by the officer and it is left in the hands of the defendant.[5] It is generally provided, however, that the officer may leave the property with the defendant upon receiving from the latter a forthcoming or deliv-

pare Conover *v.* Ruckman, 33 N. J. Eq. 303; Wehle *v.* Conner, 83 N. Y. 231.

[1] Jackson *v.* Ramsey, 15 Am. Dec. 242, and note. *Contra, Ex parte* Foster, 2 Story, 131.

[2] Kuhn *v.* Graves, 9 Iowa, 303; Ziegenhager *v.* Doe, 1 Ind. 296; Gates *v.* Bushnell, 9 Conn. 530; Taffts *v.* Manlove, 14 Cal. 47; Lynch *v.* Crary, 52 N. Y. 181; Learned *v.* Vandenburgh, 8 How. Pr. (N. Y.) 77; Tomlinson *v.* Stiles, 4 Dutch. (N. J.) 201; Pond *v.* Griffin, 1 Ala. 678; note to Franklin Bank *v.* Bachelder, 39 Am. Dec. 601, 607. But under some statutes it is made a lien from the time it is placed in the hands of the officer. Shirk *v.* Wilson, 13 Ind. 129; Moore *v.* Fitz, 15 Ind. 43; Fee *v.* Moore, 74 Ind. 319.

[3] Tyrell *v.* Roundtree, 7 Pet. (U. S.) 464; Brown *v.* Williams, 31 Me. 403; Rodgers *v.* Bonner, 45 N.Y. 379; Hannahs *v.* Felt, 15 Iowa, 141; Lackey *v.* Seibert, 23 Mo. 85; Oldham *v.* Schrivener, 3 B. Mon. (Ky.) 579; Porter *v.* Pico, 55 Cal. 165; Cockey *v.* Milne, 16 Md. 200; note to Franklin Bank *v.* Bachelder, 39 Am. Dec. 601, 607.

[4] Franklin Bank *v.* Bachelder, 23 Me. 60, S. C. 39 Am. Dec. 601, and note; Davenport *v.* Lacon, 17 Conn. 278; Smith *v.* Bradstreet, 16 Pick. (Mass.) 264; Franklin Fire Ins. Co. *v.* West, 8 Watts & S. (Pa.) 350; Murray *v.* Gibson, 2 La. Ann. 311; Hervey *v.* Champion, 11 Humph. (Tenn.) 569; Harrison *v.* Trader, 29 Ark. 85; Grigg *v.* Banks, 59 Ala. 311; Ward *v.* McKenzie, 33 Texas, 297, S. C. 7 Am. R. 261.

[5] Gower *v.* Stevens, 19 Maine, 92; Thompson *v.* Baker, 74 Me. 48; Chadbourne *v.* Sumner, 16 N. H. 129; Sanford *v.* Boring, 12 Cal. 539; Gordon *v.* Jenney, 16 Mass. 465; Taintor *v.* Williams, 7 Conn. 271; Boynton *v.* Warren, 99 Mass. 172.

ery bond for the return of the property in case judgment is rendered against him, and this does not dissolve the attachment or affect the lien.[1] By giving such a bond the defendant, it seems, estops himself from denying that the property is subject to attachment or the levy valid,[2] but it has been held that he may afterwards move to set aside the attachment.[3]

§ 385. **Dissolution of attachment.**—The attachment is dissolved by final judgment for the defendant in the main action,[4] even though it be a judgment of non-suit.[5] So, defects and irregularities in the proceedings may be cause for dissolving the attachment upon motion.[6] And, in most of the States, it may also be dissolved by the defendant giving a bond, with surety, for the payment of any judgment that may be recovered against him in the action.[7] So, the defendant may obtain a dissolution of the attachment by showing that the alleged grounds therefor do not exist.[8] It has also been held that the death of the defendant and abatement of the suit will dissolve

[1] Gass *v.* Williams, 46 Ind. 253; Tyler *v.* Safford, 24 Kan. 580. In some jurisdictions a mere receipt is given. Perry *v.* Somerby, 57 Me. 552; Lewis *v.* Webber, 116 Mass. 450; Cornell *v.* Dakin, 38 N. Y. 253.

[2] Morgan *v.* Furst, 4 Mart. N. S. (La.) 116, S. C. 16 Am. Dec. 166; Bowley *v.* Angire, 49 Vt. 41; People *v.* Reeder, 25 N. Y. 302; Scanlan *v.* O'Brien, 21 Minn. 434; Haggart *v.* Morgan, 5 N. Y. 422, S. C. 55 Am. Dec. 350.

[3] Garbutt *v.* Hanff, 15 Abb. Pr. (N. Y.) 189. Compare Morrison *v.* Alphin, 23 Ark. 136; Paddock *v.* Matthews, 3 Mich. 18.

[4] Suydam *v.* Huggerford, 23 Pick. (Mass.) 465; Clapp *v.* Bell, 4 Mass. 99; Ouzts *v.* Seabrook, 47 Ga. 359; Hale *v.* Cummings, 3 Ala. 398; Wheeler *v.* Nichols, 32 Me. 233.

[5] Brown *v.* Harris, 2 G. Greene, 505, S. C. 52 Am. Dec. 535; Danforth *v.* Carter, 4 Ia. 230.

[6] Bruce *v.* Conyers, 54 Ga. 678; Clark *v.* Roberts, 1 Ill. 285.

[7] Cole *v.* Parker, 7 Ia. 167, S. C. 71 Am. Dec. 439; Winter *v.* Kinney, 1 N. Y. 365; Shirley *v.* Byrnes, 34 Tex. 625; Barry *v.* Foyles, 1 Pet. (U. S.) 311; Hills *v.* Moore, 40 Mich. 210; Payne *v.* Snell, 3 Mo. 409; McCombs *v.* Allen, 82 N. Y. 114; Eddy *v.* Moore, 23 Kan. 113; Brenner *v.* Moyer, 98 Pa. St. 274; Hill *v.* Harding, 93 Ill. 77; Dunn *v.* Crocker, 22 Ind. 324.

[8] Lovier *v.* Gilpin, 6 Dana (Ky.), 321; Drake on Attachment, § 399; Shulenberg *v.* Farwell, 84 Ill. 400.

the attachment.[1] But mere bankruptcy of the defendant will not dissolve it.[2]

§ 386. **Garnishment—Generally.**—Garnishment is, in effect, the attachment of property of the defendant in the hands of a stranger. Like attachment proper it is a creature of statute, and the statute should be carefully followed.[3] It is auxiliary or ancillary to the principal case and furnishes a more effectual means for the recovery of debts or claims by notifying or warning one who is indebted to the defendant or has property belonging to him to appear and make answer as to such indebtedness or as to the possession of such property, and not to pay such indebtedness or surrender the property until further order of the court. It is usually permitted only in cases in which an attachment would be authorized,[4] and binds the garnishee as to the debt or property in his hands from the date of the service of the writ.[5] Many of the statutes provide that any person being indebted to the defendant or having money or other property of the defendant in his possession or under his control may be garnished, and this provision would seem to be broad enough to include agents and fiduciaries generally,[6] as well as others, but it has not always been so construed,

[1] Upham *v.* Dodge, 11 R. I. 621; Collins *v.* Duffy, 7 La. Ann. 39; Davenport *v.* Tilton, 10 Metc. (Mass.) 320; Hensley *v.* Morgan, 47 Cal. 622; Rowher *v.* Hill, 60 Me. 172; Sweringen *v.* Eberius, 7 Mo. 421, S. C. 38 Am. Dec. 463. *Contra*, Smith *v.* Warden, 35 N. J. L. 346; Moore *v.* Thayer, 10 Barb. (N. Y.) 258; Lord *v.* Allen, 34 Ia. 281.

[2] Franklin Bank *v.* Bachelder, 23 Me. 60, S. C. 39 Am. Dec. 601, and note; Batchelder *v.* Putnam, 54 N. H. 84, S. C. 20 Am. R. 115; Munson *v.* Railroad Co., 120 Mass. 81, S. C. 21 Am. R. 499. *Contra*, Foster's Case, 2 Story, 131.

[3] Gibbon *v.* Bryan, 3 Ill. App. 298; Black *v.* Brisbin, 3 Minn. 360, S. C. 74 Am. Dec. 762; Ferris *v.* Ferris, 25 Vt. 100; Ford *v.* Detroit, etc., Co., 50 Mich. 358; Schindler *v.* Smith, 18 La. Ann. 476; Wolf *v.* Tappan, 5 Dana (Ky.), 361. In some States, however, it is held that such statutes should be liberally construed for the advancement of the remedy. Bacon Academy *v.* Dewolf, 26 Conn. 602; Treadway *v.* Andrews, 20 Conn. 384; Hannibal, etc., R. R. Co. *v.* Crane, 102 Ill. 249; Mansfield *v.* New England, etc., Co., 58 Me. 35, 38; Fisher *v.* Hervey, 6 Col. 16.

[4] See Hill *v.* Whitney, 16 Vt. 461; *ante*, §§ 379, 380.

[5] First Nat. Bank *v.* Armstrong, 101 Ind. 244; Simpson *v.* Potter, 18 Ind. 429; Brashear *v.* West, 7 Pet. (U. S.) 608; Emanuel *v.* Bridger, L. R., 9 Q. B. 286; Holmes *v.* Tutton, 5 El. & B. 65.

[6] See Halbert *v.* Stinson, 6 Blackf.

and, in the absence of such a provision, executors, administrators, guardians, and the like, can not be garnished,[1] nor can a mere agent of the defendant for money held by him for his principal.[2] So, sheriffs and public officers are usually exempt from garnishment as to property *in custodia legis* or held by the officer in his official capacity.[3] Private corporations may be garnished,[4] and in many States provision is made for reaching the shares of corporate stock belonging to the defendant; but it is generally held that a city or other municipal corporation can not be garnished.[5] So, in the absence of any statu-

(Ind.) 398; Simonds *v.* Harris, 92 Ind. 505; Norton *v.* Norton, 43 Ohio St. 509; Lyman *v.* Wood, 42 Vt. 113; Coble *v.* Nonemaker, 78 Pa. St. 501; Hoyt *v.* Christie, 51 Vt. 48.

[1] Brooks *v.* Cook, 8 Mass. 246; Barnes *v.* Treat, 7 Mass. 271; Nickerson *v.* Chase, 122 Mass. 296; Norton *v.* Clark, 18 Nev. 247; Whitehead *v.* Coleman, 31 Gratt. (Va.) 784; Hansen *v.* Butler, 48 Me. 81; Conway *v.* Armington, 11 R. I. 116; Case, etc., Co. *v.* Miracle, 54 Wis. 295. See, also, Hoag *v.* Hoag, 55 N. H. 172; Knight *v.* Clyde, 12 R. I. 119; Belknap *v.* Gibbens, 13 Metc. (Mass.) 471. So, as a general rule, trust funds are not subject to garnishment. Keyser *v.* Mitchell, 67 Pa. St. 473; White *v.* Jenkins, 16 Mass. 62; White *v.* White, 30 Vt. 338; Morrill *v.* Raymond, 28 Kan. 415, S. C. 42 Am. R. 167; Hurd *v.* Trust Co., 63 How. Pr. (N. Y.) 314.

[2] McDonald *v.* Gillett, 69 Me. 271; Hall *v.* Filter Mfg. Co., 10 Phila. (Pa.) 370; Flanagan *v.* Wood, 33 Vt. 332; First Nat. Bank *v.* Railroad Co., 45 Ia. 120; Neuer *v.* O'Fallon, 18 Mo. 277, S. C. 59 Am. Dec. 313.

[3] Pollard *v.* Ross, 5 Mass. 319; Hill *v.* Railroad Co., 14 Wis. 291, S. C. 80 Am. Dec. 783; Waite *v.* Osborne, 11 Me. 185; Glenn *v.* Gill, 2 Md. 1; Tremper *v.* Brooks, 40 Mich. 333; Lodor *v.* Baker, 39 N. J. L. 49; Averill *v.* Tucker, 2 Cranch C. C. 544. Compare Hurlburt *v.* Hicks, 17 Vt. 193, S. C. 44 Am. Dec. 329; Gaither *v.* Ballew, 4 Jones (N. Car.), 488, S. C. 69 Am. Dec. 763. An attorney may, however, be subject to garnishment. Hancock *v.* Colyer, 99 Mass. 187, S. C. 96 Am. Dec. 730; Ayer *v.* Brown, 77 Me. 195; Mann *v.* Buford, 3 Ala. 312, S. C. 37 Am. Dec. 691.

[4] Knox *v.* Protection Ins. Co., 9 Conn. 430, S. C. 25 Am. Dec. 33; Baltimore, etc., R. R. Co. *v.* Gallahue, 12 Gratt. 655, S. C. 65 Am. Dec. 254; Boyd *v.* Chesapeake Canal Co., 17 Md. 195; Taylor *v.* Burlington, etc., R. R. Co., 5 Iowa, 114; St. Louis, etc., Co. *v.* Cohen, 9 Mo. 421; Hughes *v.* Oregonian R'y Co., 11 Ore. 158. Compare Michigan Cent. R. R. Co. *v.* Chicago, etc., R. R. Co., 1 Ill. App. 399; Holland *v.* Leslie, 2 Harr. (Del.) 306. As to when foreign corporations may be, see Neufelder *v.* German-American Ins. Co. (Wash.), 33 Pac. R. 870; German Bank *v.* Am. Fire Ins. Co., 83 Iowa, 491, S. C. 32 Am. St. R. 316, and note; Folger *v.* Columbian Ins. Co., 99 Mass. 267, S. C. 96 Am. Dec. 747, and note.

[5] Erie *v.* Knapp, 29 Pa. St. 173; Merrell *v.* Campbell, 49 Wis. 535, S. C. 35 Am. R. 785; Memphis *v.* Laski, 9 Heisk. (Tenn.) 511, S. C. 24 Am. R.

tory provision upon the subject, real estate is not subject to garnishment.[1]

§ 387. **Procedure in garnishment.**—In some of the States the writ of attachment itself authorizes the officer not only to levy on the property of the defendant subject to actual seizure in his own hands, but also to reach that in the hands of a third person by summoning him as a garnishee. In others, however, an affidavit must be filed in garnishment before the writ will be issued against the garnishee,[2] and in some jurisdictions a special bond must also be given.[3] Upon compliance with the statutory requirements a writ issues commanding the garnishee to appear and answer. The garnishee is usually required to appear in court in person and submit to an examination as to his alleged indebtedness to the defendant or possession of the latter's property.[4] In many jurisdictions, instead of an oral examination, the same purpose is accomplished by filing interrogatories which the garnishee is required to answer.[5] Corporations answer under their corporate seal or by

327; Walker *v.* Cook, 129 Mass. 577; Hawthorn *v.* St. Louis, 11 Mo. 59, S. C. 47 Am. Dec. 141; Spencer *v.* School District, 11 R. I. 537; City of Denver *v.* Brown, 11 Colo. 337, S. C. 18 Pac. R. 214; Commissioners *v.* Bond, 3 Col. 411; Wallace *v.* Lawyer, 54 Ind. 501, S. C. 23 Am. R. 661. But, see Wales *v.* Muscatine, 4 Iowa, 302; Rodman *v.* Musselman, 12 Bush (Ky.), 354, S. C. 23 Am. R. 724; Mayor *v.* Horton, 38 N. J. L. 88; Jenks *v.* Osceola Township, 45 Iowa, 554; City of Newark *v.* Funk, 15 Ohio St. 462.

[1] How *v.* Field, 5 Mass. 390; Bissell *v.* Strong, 9 Pick. 562; Stedman *v.* Vickery, 42 Me. 132; Risley *v.* Welles, 5 Conn. 431; Hunter *v.* Case, 20 Vt. 195; Wright *v.* Bosworth, 7 N. H. 590; National Union Bank *v.* Brainerd (Vt.), 26 Atl. R. 723.

[2] As to requisites of the affidavit, see Steen *v.* Norton, 45 Wis. 412; Prince *v.* Heenan, 5 Minn. 341; Farwell *v.* Chambers, 62 Mich. 316; Ordway *v.* Remington, 12 R. I. 319, S. C. 34 Am. R. 646; Corbin *v.* Goddard, 94 Ind. 419; Sun Mut. Ins. Co. *v.* Seeligson, 59 Tex. 3.

[3] Rothermel *v.* Marr, 98 Pa. St. 285; Citizens' Bank *v.* Payne, 21 La. Ann. 380; Pounds *v.* Hammer, 57 Ala. 342; Hays *v.* Anderson, 57 Ala. 374.

[4] Brainard *v.* Simmons, 58 Ia. 464; Thompson *v.* Silvers, 59 Ia. 670; Wright *v.* Swanson, 46 Ala. 708; Curry *v.* Woodward, 53 Ala. 371; Roberts *v.* Landecker, 9 Cal. 262, 266. See, also, Cornell *v.* Payne, 115 Ill. 63, 68.

[5] Waples on Attachment, § 348; Nutter *v.* Railroad Co., 131 Mass. 231; Parker *v.* Page, 38 Cal. 522; Crossman *v.* Crossman, 21 Pick. 21; Roquest *v.* Steamer, 13 La. Ann. 210; Richardson *v.* White, 19 Ark. 241; Roberts *v.* Barry, 42 Miss. 260.

their proper officers or agents.[1] In some States the sworn answer of the garnishee is conclusive,[2] but in most jurisdictions the garnishee's liability may be shown by the plaintiff by evidence *aliunde*, notwithstanding the answer of the garnishee.[3] Where this is the case, issue is taken on the answer, in some States by affidavit or further pleadings and trial,[4] and in others by oral examination and evidence of parties and witnesses without any further pleading.[5] When the liability of the garnishee is not clearly shown he will be discharged,[6] and so if the plaintiff fails to obtain judgment against the defendant.[7] As against the garnishee the plaintiff stands in the defendant's shoes and can acquire no greater right, in the absence of fraud or collusion, than the defendant had at the time of the garnishment,[8] and he should be properly protected by the judg-

[1] Baltimore, etc., R. R. Co. *v.* Gallahue, 12 Gratt. (Va.) 655, S. C. 65 Am. Dec. 254; Chicago, etc., R. R. Co. *v.* Mason, 11 Ill. App. 525; Udall *v.* School District, 48 Vt. 588; Head *v.* Merrill, 34 Me. 586; Planters', etc., Bank *v.* Leavans, 4 Ala. 753.

[2] Raymond *v.* Narragansett, etc., Co., 14 R.I. 310; Moore *v.* Green, 4 Humph. (Tenn.) 299; Childress *v.* Dickins, 8 Yerg. (Tenn.) 113.

[3] Fearey *v.* Cummings, 41 Mich. 376; Bebb *v.* Preston, 1 Ia. 460; National Bank *v.* Lake Shore, etc., R. R. Co., 21 Ohio St. 221; Kelley *v.* Weymouth, 68 Me. 197; Davis *v.* Knapp, 8 Mo. 657; Rippen *v.* Schoen, 92 Ill. 229; Britt *v.* Bradshaw, 18 Ark. 530, and authorities cited in following notes.

[4] Ellison *v.* Tuttle, 26 Tex. 283; Myatt *v.* Lockhart, 9 Ala. 91; Faulks *v.* Heard, 31 Ala. 516; Williams *v.* Jones, 42 Miss. 270; Lindsay *v.* Morris (Ala.), 13 So. R. 619.

[5] Corbin *v.* Goddard, 94 Ind. 419.

[6] Hurst *v.* Home Ins. Co., 81 Ala. 174; Field *v.* Malone, 102 Ind. 251; Seward *v.* Arms, 145 Mass. 195; Padden *v.* Moore, 58 Ia. 703; Meadowcroft *v.* Agnew, 89 Ill. 469; Pierce *v.* Carleton, 12 Ill. 358; Nashville *v.* Potomac Ins. Co., 58 Tenn. 296.

[7] Case *v.* Moore, 21 Ala. 758; Rose *v.* Whaley, 14 La. Ann. 374; Kellogg *v.* Freeman, 50 Miss. 127; Washburn *v.* New York, etc., Co., 41 Vt. 50; Rowlett *v.* Lane, 43 Tex. 274; Emanuel *v.* Smith, 38 Ga. 602; Collins *v.* Friend, 21 La. Ann. 7; Bostwick *v.* Beach, 18 Ala. 80; Laidlaw *v.* Morrow, 44 Mich. 547; Withers *v.* Fuller, 30 Gratt. (Va.) 547.

[8] Noble *v.* Thompson Oil Co., 79 Pa. St. 354, S. C. 21 Am. R. 66; Myer *v.* Liverpool Ins. Co., 40 Md. 595; Harris *v.* Phœnix Ins. Co., 35 Conn. 310; Samuel *v.* Agnew, 80 Ill. 553; Mathis *v.* Clark, 2 Mill (S. Car.), 456, S. C. 12 Am. Dec. 688; Whipple *v.* Robbins, 97 Mass. 107; Secor *v.* Witter, 39 Ohio St. 218; Oregon, etc., Co. *v.* Gates, 10 Ore. 514; Burlington, etc., Co. *v.* Thompson, 31 Kan. 180.

ment.[1] If he is duly served and does not appear and answer judgment may be taken against him by default.[2]

§ 388. **Duty and liability of garnishee.**—The garnishee, when properly served, should appear and answer, disclosing the facts, or if the defendant has not been personally served and does not appear the garnishee must question the jurisdiction of the court if it has none.[3] It has also been held that he must present the question of the defendant's right to exemption where he has knowledge that such a right exists,[4] but as the right to exemption is generally considered a mere personal privilege, it would seem that, upon principle, the garnishee can neither insist upon such a defense, where the principal defendant waives it, nor be held liable for

[1] See 8 Am. & Eng. Encyc. of Law, 1244.

[2] Abell *v.* Simson, 49 Md. 318; Penn *v.* Pelan, 52 Ia. 535; Drake on Attachment, § 636. But proof should be made. Lewis *v.* Faul, 29 Ark. 470. And, in some States, at least, the judgment is conditional. Horat *v.* Jackel, 59 Ill. 139. As he can only be held in case the plaintiff recovers against the defendant it would seem that no absolute final judgment can be rendered against him upon default in the absence of a judgment against the defendant. See Bryan *v.* Dean, 63 Ga. 317; Johnson *v.* Johnson, 26 Ind. 441; Whorley *v.* Memphis, etc., R. R. Co., 72 Ala. 20; Withers *v.* Fuller, 30 Gratt. (Va.) 547.

[3] Debs *v.* Dalton (Ind.), 34 N. E. R. 236; Emery *v.* Royal, 117 Ind. 299, S. C. 20 N. E. R. 150; Andrews *v.* Powell, 27 Ind. 303; Pierce *v.* Carleton, 12 Ill. 358, S. C. 54 Am. Dec. 405; Laidlaw *v.* Morrow, 44 Mich. 547; Kellogg *v.* Freeman, 50 Miss. 127; Stone *v.* Magruder, 10 Gill & J. 383, S. C. 32 Am. Dec. 177; Thayer *v.* Tyler, 10 Gray, 164; Cota *v.* Ross, 66 Me. 161; Woodfolk *v.* Whitworth, 5 Coldw. (Tenn.) 561; Drake on Attachment, § 965. It is otherwise, however, where the defendant is personally served or appears. Washburn *v.* New York, etc., Co., 41 Vt. 50; Harmon *v.* Birchard, 8 Blackf. (Ind.) 418; Newman *v.* Manning, 89 Ind. 422. So as to mere irregularities or technical errors that the principal defendant might have taken advantage of, but which do not go to the jurisdiction. Whitehead *v.* Henderson, 4 Smed. & M. (Miss.) 704; Gunn *v.* Howell, 35 Ala. 144, S. C. 73 Am. Dec. 484; Reynolds *v.* Collins, 78 Ala. 94; Empire, etc., Co. *v.* Macey, 115 Ill. 390; Earl *v.* Matheney, 60 Ind. 202; Baltimore, etc., Co. *v.* Taylor, 81 Ind. 24; Henny, etc., Co. *v.* Patt, 73 Iowa, 485.

[4] Mineral Point R. R. Co. *v.* Barron, 83 Ill. 365; Pierce *v.* Railroad Co., 36 Wis. 283; Chicago & A. R. R. Co. *v.* Ragland, 84 Ill. 375; Clark *v.* Averill, 31 Vt. 512, S. C. 76 Am. Dec. 131; Mull *v.* Jones, 33 Kan. 112; Terre Haute, etc., Co. *v.* Baker, 122 Ind. 433; Parker *v.* Wilson, 61 Vt. 116; Davis *v.* Meredith, 48 Mo. 263; Smith *v.* Dickson, 58 Ia. 444.

not making it.[1] The garnishee may generally set up any defense he might have had if sued by the defendant, such as the statute of limitations,[2] set-off[3] or the like;[4] and if he has been garnished in a prior proceeding for the same matter he should set up or disclose that fact.[5] A prior settlement between the principal defendant and the garnishee extinguishing the debt, or payment in good faith made by the garnishee to such defendant, before the service of the writ, may discharge the garnishee from liability;[6] but such settlement or payment after the service of the writ will not discharge him.[7] He may also be discharged, under some statutes, by the payment of the money into court or delivery of the property to the officer,[8] but if the money is not paid over or the property delivered he should retain it until the final adjustment of the suit.[9] If judgment is rendered in favor of the garnishee he is entitled

In several of the cases cited, however, wages were garnished which were exempted by special statute.

[1] See Osborn *v.* Schutt, 67 Mo. 712; Moore *v.* Railroad Co., 43 Iowa, 385; Chilcote *v.* Conley, 36 Ohio St. 545. Where wages are expressly made exempt from garnishment by special statute, a different principle ought to apply, but where the garnishee has simply failed to plead that the defendant is entitled to an exemption of a certain amount of property from execution under the general statute, we think he ought not to be held liable to the defendant on that account, especially if the defendant appears or is personally served.

[2] Hazen *v.* Emerson, 9 Pick. 144; Crossman *v.* Crossman, 21 Pick. 21, 24; Benton *v.* Lindell, 10 Mo. 557.

[3] Pennell *v.* Grubb, 13 Pa. St. 552; Dyer *v.* McHenry, 13 Iowa, 527; Cox *v.* Russell, 44 Iowa, 556, 562; Wheeler *v.* Emerson, 45 N. H. 526; St. Louis *v.* Regenfuss, 28 Wis. 144.

[4] Myers *v.* Baltzell, 37 Pa. St. 491; Firebaugh *v.* Stone, 36 Mo. 111; Edson *v.* Sprout, 33 Vt. 77; Baker *v.* Eglin, 11 Ore. 333; Sauer *v.* Nevadaville, 14 Colo. 54; Schuler *v.* Israel, 120 U. S. 506.

[5] Houston *v.* Walcott, 7 Iowa, 173; Royer *v.* Fleming, 58 Mo. 438; Bullard *v.* Hicks, 17 Vt. 198; Everdell *v.* Sheboygan, etc., Co., 41 Wis. 395; Wade on Attachment, § 382.

[6] Huntington *v.* Risdon, 43 Iowa, 517; Lieberman *v.* Hoffman, 102 Pa. St. 590; Getchell *v.* Chase, 124 Mass. 366; Center *v.* McQuesten, 24 Kan. 480.

[7] Cleneay *v.* Junction R. R. Co., 26 Ind. 375; Stevens *v.* Dillman, 86 Ill. 233; Johann *v.* Rufener, 32 Wis. 195; Arnold *v.* Linaweaver, 3 Head (Tenn.), 51; Loyless *v.* Hodges, 44 Ga. 647; Leslie *v.* Merrill, 58 Ala. 322; Ellis *v.* Goodnow, 40 Vt. 237; West *v.* Platt, 116 Mass. 308; Hughes *v.* Monty, 24 Iowa, 499.

[8] Ryan *v.* Burkam, 42 Ind. 507.

[9] Ryan *v.* Burkam, 42 Ind. 507.

to his costs,[1] unless incurred through his own fault or neglect.[2] They are usually taxed against the losing party,[3] but if the garnishee is unsuccessful and has sufficient property of the defendant out of which he can be reimbursed the costs of the garnishment may be taxed against him.[4]

§ 389. **Ne exeat.**—Constitutional provisions in various States have rendered the writ of *ne exeat* practically obsolete where they exist, and it is seldom resorted to in any State; but in some jurisdictions and in some States it is a very effective means of reaching a defendant who has sequestered his property and is about to leave the country.[5] Originally it was a high prerogative writ, issued for political purposes, forbidding a subject to leave the realm; but it has since come into general use in equity in aid of remedial justice. It is, in effect, a writ for equitable bail,[6] and is usually granted only in cases of equitable demands[7] which are certain[8] and presently payable,[9] where the defendant is about to leave the country to avoid their payment.[10] It is most commonly issued from a Federal

[1] Jarvis *v.* Mitchell, 99 Mass. 530.

[2] Wearne *v.* Haynes, 13 Nev. 103; Randolph *v.* Little, 62 Ala. 396; Hanson *v.* Butler, 48 Me. 81.

[3] Hannibal, etc., Co. *v.* Crane, 102 Ill. 249; Sulter *v.* Brooks, 74 Ga. 401.

[4] Holbrook *v.* Waters, 19 Pick. 354; Baltimore, etc., Co. *v.* Taylor, 81 Ind. 24; Baker *v.* Lancashire Ins. Co., 52 Wis. 193; Whitney *v.* Kelley, 67 Me. 377; Strong *v.* Hollon, 39 Mich. 411.

[5] For cases in which it has been used, see People *v.* Barton, 16 Col. 75, 26 Pac. R. 149; Denton *v.* Denton, 1 Johns. Ch. (N. Y.) 364; Coglar *v.* Coglar, 1 Ves. Jr. 94; Jones *v.* Alephsin, 16 Ves. 470; Mitchell *v.* Bunch, 2 Paige (N. Y.), 606, S. C. 22 Am. Dec. 669; Shainwald *v.* Lewis, 46 Fed. R. 839; Old Hickory, etc., Co. *v.* Bleyer, 74 Ga. 201; Johnson *v.* Clendenin, 5 Gill & J. 463; 2 Beach Modern Eq., §§ 1010, 1011; note to Moore *v.* Valda, 7 L. R. A. 396.

[6] Cable *v.* Alvord, 27 Ohio St. 666; Gresham *v.* Peterson, 25 Ark. 377; Mitchell *v.* Bunch, 2 Paige (N. Y.), 606, S. C. 22 Am. Dec. 669; 2 Story's Eq., §§ 1469, 1470; Adams' Eq., 360.

[7] Hannahan *v.* Nicholis, 17 Ga. 77; Lucas *v.* Hickman, 2 Stew. (Ala.) 11, S. C. 19 Am. Dec. 44; 2 Story's Eq. Jur., § 1470; 2 Beach Modern Eq., § 1011; Adams' Eq., 360, 361; note to Moore *v.* Valda, 7 L. R. A. 396.

[8] Graham *v.* Stucken, 4 Blatchf. 50; Sherman *v.* Sherman, 2 Bro. C. C. (Perkins' ed. note) 370; Mattocks *v.* Tremain, 3 Johns. Ch. (N. Y.) 75; McDonough *v.* Gaynor, 18 N. J. Eq. 249.

[9] Seymour *v.* Hazard, 1 Johns. Ch. (N. Y.) 1; Rhodes *v.* Cousins, 6 Rand (Va.), 188, S. C. 18 Am. Dec. 715; Whitehouse *v.* Partridge, 3 Swanst. 365.

[10] Graham *v.* Stucken, 4 Blatchf. 50; Mitchell *v.* Bunch, 2 Paige (N. Y.), 606, S. C. 22 Am. Dec. 669; Fitzgerald *v.*

court of equity. The writ should be prayed for in the bill,[1] but may be granted at any time after the bill is filed even though it contains no prayer for a *ne exeat*,[2] and the application may be made *ex parte*.[3] When not prayed for in the bill it is usually granted upon a motion or petition supported by affidavit.[4] The writ may issue against a foreigner within the jurisdiction of the court as well as against a citizen.[5] The writ may be discharged upon motion made within a reasonable time,[6] for good cause, or by giving security,[7] or paying the amount of the plaintiff's claim into court.[8]

§ 390. **Injunction—Generally.**—An injunction is very often an important auxiliary remedy, but it is not always an auxiliary proceeding; on the contrary, an injunction is in many instances the principal relief required.[9] It is not our purpose

Gray, 59 Ind. 254; Dean *v.* Smith, 23 Wis. 483, S. C. 99 Am. Dec. 198.

[1] U. S. Eq., Rule, 21; Adams' Eq., 361.

[2] Collinson's Case, 18 Ves. Jr. 353; Lewis *v.* Shainwald, 7 Saw. 403, 417; note to Moore *v.* Valda, 7 L. R. A. 396. It may be granted after final decree and will continue in force until dissolved by court or satisfaction of the decree. Lewis *v.* Shainwald, 48 Fed. R. 492.

[3] Collinson's Case, 18 Ves. Jr. 353; Samuel *v.* Wiley, 50 N. H. 353; Elliott *v.* Sinclair, Jacob, 545; McGhee *v.* McGhee, 8 Ga. 295, S. C. 52 Am. Dec. 407.

[4] Cable *v.* Alvord, 27 Ohio St. 654; Clayton *v.* Mitchell, 1 Del. Ch. 32; Mattocks *v.* Tremain, 3 Johns. Ch. (N. Y.) 75; Rico *v.* Ganltier, 3 Atk. 501; Adams' Eq., 361; note to Moore *v.* Valda, 7 L. R. A. 396.

[5] Flack *v.* Holm, 1 J. & W. 405; McNamara *v.* Dwyer, 7 Paige (N. Y.), 239, S. C. 32 Am. Dec. 627; Mitchell *v.* Bunch, 2 Paige (N. Y.), 606, S. C. 22 Am. Dec. 669. It has been held that it will not issue against a married woman. Moore *v.* Valda, 151 Mass. 363, S. C. 23 N. E. R. 1102; Adams *v.* Whitcomb, 46 Vt. 708. But, compare Moore *v.* Hudson, 6 Mad. 138.

[6] Gernon *v.* Boecaline, 2 Wash. C. C. 130; Grant *v.* Grant, 3 Russ. 598, 602; West *v.* Walker, 6 Blackf. (Ind.) 420; Harris *v.* Hardy, 3 Hill (N. Y.), 393; Miller *v.* Miller, 1 N. J. Eq. 386. See Cary *v.* Cary, 39 N. J. Eq. 20.

[7] Roddam *v.* Hetherington, 5 Ves. 91; Baker *v.* Dumaresque, 2 Atk. 66; Georgia Lumber Co. *v.* Bissell. 9 Paige (N. Y.), 225; Bleyer *v.* Blum, 70 Ga. 558; Parker *v.* Parker, 12 N. J. Eq. 105.

[8] Evans *v.* Evans, 1 Ves. Jr. 96; Gilbert *v.* Colt, Hopk. Ch. (N. Y.) 562.

[9] An injunction is an order or writ requiring a party to do or refrain from doing a particular act or particular acts. Equity in employing the remedy of injunction usually restrains or prevents, but it also issues what is called a mandatory injunction and by such an order or writ commands that acts shall be done. Chicago, etc., Co.

to treat at length of the subject of injunctions since that would be outside of the scope of our work; all that we propose to do is to treat of the order or writ as an auxiliary remedy, but in doing this we must necessarily speak of the general features of the writ or order of injunction whether it constitutes an auxiliary remedy or is the principal or exclusive remedy in the suit. Whether issued as a principal remedy or as an auxiliary one an injunction is one of the most powerful and efficacious instruments of preventive justice. Where the two systems, law and equity, are separate and the courts adhere to old doctrines the remedy is much restricted, much more, as it seems

v. St. Jo, etc., Co., 38 Fed. R. 58; Martyr *v.* Lawrence, 2 De G. J. & S. 261; Murdock's Case, 2 Bland's Ch. 461, S. C. 20 Am. Dec. 381; Toledo, etc., Co. *v.* Penna.Co..54 Fed.R.730, 19 Lawy.R. Anno. 387; Gardner *v.* Stroever, 81 Cal. 148, 6 Lawy.R.Anno. 90; Mastin *v.* Halley, 61 Mo. 196; Atchison, etc., Co. *v.* Long, 46 Kan. 701; Pensacola, etc., Co. *v.* Spratt, 12 Fla. 26, S. C. 91 Am. Dec. 747; Brown *v.* Haff, 5 Paige, 235, S. C. 28 Am. Dec. 425; Bailey *v.* Schnitzins, 45 N. J. Eq. 178; Andrews *v.* McLeod, 66 Miss. 348; Whitecar *v.* Michenor, 37 N. J. Eq. 6; Hodge *v.* Giese, 43 N. J. Eq. 342; Shivers *v.* Shivers, 32 N. J. Eq. 578; Sullivan *v.* Graffert, 53 Ia. 531; Danenhauer *v.* Devine, 51 Tex. 480; Denny *v.* Denny, 113 Ind. 22; Allen *v.* Hanks, 136 U. S. 300; Kilbourn *v.* Sunderland, 130 U. S. 505; Gormley *v.* Clark, 134 U. S. 338. A mandatory injunction may be awarded upon a preliminary hearing. Toledo, etc., Co. *v.* Penna. Co., *supra*. It is a settled principle of equity jurisprudence that an injunction will not be granted where there is an adequate remedy at law, but to exclude relief by injunction the legal remedy must be equally as prompt, full and efficacious as that of equity. Watson *v.* Sutherland, 5 Wall. 74; Buzard *v.* Houston, 119 U. S. 347; Boyce's Ex. *v.* Gundy, 3 Pet. 210; Hower *v.* Weiss, 55 Fed. R. 356; Beadel *v.* Perry, L. R., 3 Eq. 465; Coe *v.* Louisville, etc., Co., 3 Fed. R. 775; Payne *v.* Kansas, etc., Co., 46 Fed. R. 546; *Re* Sloan (N. M.), 25 Pac. R. 930. See, generally, United Lines, etc., Co. *v.* Grant, 137 N. Y. 7, 32 N. E. R. 1005; Lowenbein *v.* Fuldner, 21 N. Y. S. 615; Hagan *v.* Blindell, 56 Fed. R. 696; Proprietors, etc., *v.* Proprietors, 85 Me. 175, S. C. 27 Atl. R. 93. The code does not entirely change the rule. Neiser *v.* Thomas, 99 Mo. 224; Bass *v.* City of Fort Wayne, 121 Ind. 389; Smith *v.* Goodknight, 121 Ind. 312, S. C. 23 N. E. R. 148. The reason for this rule is not that the relief is equitable, since under the code there is no substantial difference between legal and equitable relief. The true reason for the rule is, as we believe, that the one remedy is ordinary and the other extraordinary. The codes of the different States have undoubtedly greatly extended the remedy by injunction. In those States where there is only one action, denominated a civil action, all relief, equitable and legal, may be obtained in a single action. Pomeroy's Remedies and Remedial Rights, 95; Feder *v.* Field, 117 Ind. 386; Field *v.* Holz-

to us, than is reasonable or just. The tendency of modern adjudications is to widen the field of preventive justice and to employ the chief of all the preventive remedies with a free hand.[1] In the code States the remedy of injunction is more often employed than in jurisdictions where the old system prevails, for in the code States all relief, equitable or legal, may be obtained in a civil action, whereas in States where the old system still exists relief by injunction can only be secured from a court of equity, so that to secure an injunction as an auxiliary aid to the enforcement of a legal cause of action the jurisdiction of two courts must be invoked, that of the one being necessary to supply relief at law, and that of the other to furnish equitable relief. Considered with reference to their duration injunctions may be thus classified: 1. Restraining orders. 2. Temporary injunctions. 3. Perpetual injunctions. A restraining order is one issued by the court upon proper application to continue until a time fixed for the hearing of the motion for a temporary injunction.[2] A restraining order is

man, 93 Ind. 205; Richwine *v.* Presbyterian Church (Ind.), 34 N. E. R. 737, 738.

[1] Champ *v.* Kendrick, 130 Ind. 549, citing Erwin *v.* Fulk, 94 Ind. 235; Bishop *v.* Moorman, 98 Ind. 1. In the case first cited, the court quoted with approval from 3 Pomeroy's Equity, § 357, the following: "That a remedy which prevents a threatened wrong is in its essential nature better than a remedy which permits the wrong to be done, and then attempts to pay for it by the pecuniary damages which a jury may assess." It seems to us that in the jurisdictions where there is only one action there is every reason for extending the field of preventive justice, and none for narrowing it. The unreasonable strife which so long prevailed between the courts of law and the courts of chancery led to a restriction of preventive remedies to the detriment of justice. There is no just reason why the old ill-working, ill-doing rules should not be swept away. The precedents of the past are, however, yet adhered to, although they have ceased to have any adequate support in reason or principle. If by preventing a wrong justice is promoted, the wrong ought to be prevented. It is infinitely more important that adequate justice be done than that precedents be observed. Especially is this true where precedents have outworn their usefulness, and the changes wrought by a liberal and enlightened view of jurisprudence have taken from them their usefulness and their office. Where, as in the code States, one court in one action administers all relief, the only consideration should be what remedy will most promptly, effectively and fairly yield justice to the litigants.

[2] Wallace *v.* McVey, 6 Ind. 300, 303; Dexter *v.* Ohlander, 95 Ala. 467, 10 So. R.

substantially the same thing as a preliminary injunction, and its essential characteristic is that it is granted until notice can be given. A restraining order corresponds to what is sometimes called a "provisional injunction" or an interlocutory injunction. Where an emergency is shown the order of injunction may issue in term or vacation without notice.[1] A temporary injunction is one granted to continue in force until a time designated by the court. In granting a temporary injunction the court does not decide the merits of the suit.[2] A temporary injunction, a preliminary injunction, or a provisional injunction is an interlocutory decretal order and is not in any instance final. A perpetual injunction is, it is hardly necessary to say, a final decree commanding a party to do or refrain from doing a particular act, and remains in force until reversed or annulled in due course of law.

§ 391. **When an injunction lies.**—We have spoken of the rule that equity will not assume jurisdiction where there is an adequate remedy at law, and have suggested that the rule still prevails even in those States where the statute declares that the distinction between law and equity is abolished.[3] The courts still cling to the old doctrine, but the modern cases have essentially modified it. The prevailing rule now is that to ex-

527; Savannah, etc., Co. *v.* Savannah, etc., Co., 87 Ga. 261, S. C. 13 S. E. R. 512.

[1] Temple *v.* Bank of England, 6 Ves. 770; Cranford *v.* Ross, 39 Ga. 44; Pendleton *v.* Dalton, 64 N. Car. 329; Wing *v.* Fairhaven, 8 Cush. 363; Perry *v.* Parker, 1 Wood & M. 280; New York, etc., Co. *v.* Fitch, 1 Paige, 97; Ogden *v.* Kip, 6 John. Ch. 160; Murdock's Case, 2 Bland. Ch. 461; Chilton *v.* Campbell, 20 Beav. 531; Lloyd *v.* Adams, 4 K. & J. 467; Mayor, etc., *v.* Curtiss, 1 Clarke, 336; Haynes *v.* Hazelrigg, 1 Tenn. 242; Rutherford *v.* Metcalf, 5 Hayw. 58; Flippin *v.* Knaffle, 2 Tenn. Ch. 243; Fanshawe *v.* Tracy, 4 Biss. 490; United States *v.* Duluth, 1 Dill, 469; Shoemaker *v.* National Bank, 2 Abb. 416; Holmes *v.* Davenport, 27 Abb. N. Cases, 75. See, generally, Meroney *v.* Atlanta, etc., Ass'n, 112 N. Car. 842, 17 S. E. R. 637; Harrell *v.* Americus Refrigerator Co. (Ga.), 17 S. E. R. 623; Cornwall *v.* Sachs, 23 N. Y. S. 500; Hagan *v.* Blindell, 54 Fed. R. 40, S. C. on appeal, 56 Fed. R. 696; Birmingham, etc., *v.* City of Bessemer (Ala.), 13 So. R. 487.

[2] Forsaith, etc., Co. *v.* Hope Mills Co., 109 N. Car. 576, S. C. 13 S. E. R. 869; Andenried *v.* Philadelphia, etc., Co., 68 Pa. St. 370; Peck *v.* Goodberlett, 109 N. Y. 180; Preston *v.* Luck, L. R., 27 Ch. Div. 497; Helm *v.* Gilroy, 20 Ore. 517, S. C. 26 Pac. R. 851.

[3] *Ante*, § 390, authorities in note.

clude the equitable remedy that of the law must be as prompt, adequate and efficient as that of equity.[1] The test of the right to an equitable remedy is, therefore, not merely whether there is some remedy at law, but whether the law remedy equals in its essential elements the equitable one. It does not follow, however, that an injunction will lie even if the case is one within the jurisdiction of equity, for an injunction is not always an appropriate remedy in suits in the equity courts. The remedy by injunction is an extraordinary one in every sense of the term, and to invoke the exercise of such a remedy a clear and strong case must be made. It is often said that an injunction is the "strong arm of equity, and is to be extended only in cases where the strongest measures are required." But this statement is not to be taken entirely without qualification, for there are cases to which it is not altogether applicable. An injunction awarded after final hearing, as in suits to quiet title or the like, is of a somewhat different nature from one awarded upon a preliminary application, for in cases of the former class it is simply made part of the decree for the purpose of preventing interference with the order quieting title, while in the latter class of cases movement of the party against whom the injunction is directed is stopped. It is, therefore, with reason that it is held that an injunction will not issue in such cases unless a clear and strong case is made by the complainant. The cases in which injunction is an appropriate remedy are very numerous, and we can not do more than refer to a few of the many cases in which it may be appropriately employed. It

[1] Watson *v.* Sutherland, 5 Wall. 74; Clark *v.* Jeffersonville, etc., Co., 44 Ind. 248; Thatcher *v.* Humble, 67 Ind. 444, 448; Bishop *v.* Moorman, 98 Ind. 1; Spicer *v.* Hoop, 51 Ind. 365; English *v.* Smock, 34 Ind. 115; Morse *v.* Morse, 44 Vt. 84; McAfee *v.* Reynolds, 130 Ind. 33, 36. In the case of Gormley *v.* Clark, 134 U. S. 338, the court said: "The jurisdiction in equity attaches, unless the legal remedy, both in respect to the final relief and the mode of obtaining it, is as efficient as the remedy which equity would afford under the same circumstances." Much to the same effect is the language of the Supreme Court of Connecticut in Hodges *v.* Kowing, 58 Conn. 12, where it was said: "It is not sufficient that there is a remedy, but it must be as prompt, complete and beneficial as the remedy in equity." See, also, Irwin *v.* Lewis, 50 Miss. 363; Sherman *v.* Clark, 4 Nev. 138.

is often employed in order to prevent a multiplicity of actions;[1] and the weight of authority and the soundest reason justify its employment at the suit of the State or its representative against corporations that abuse their corporate powers to the injury of the public interests or public safety, or to the subversion of public policy.[2] The remedy is appropriate where conspiracies are formed and acts are done in execution of it by employees to the injury of employers.[3] It is an effective and proper rem-

[1] Smith *v.* Bivens, 56 Fed. R. 352; Hagan *v.* Blindell, 56 Fed. R. 696; Foster's Fed. Proc., § 209; 2 Beach Mod. Eq., § 644.

[2] This general doctrine is vindicated in an opinion strong in reasoning and rich in authority in the case of Attorney General *v.* The Railroads, 35 Wis. 425. The authorities are there collected and ably reviewed. See, also, Stockton *v.* Central, etc., Co., 50 N. J. Eq.——, S. C. 17 Lawy. R. Anno. 97, 103; Attorney General *v.* Delaware, etc., Co., 27 N. J. Eq. 631, 633; Ware *v.* Regents Canal Co., 3 De Gex & J. 212, 228; Fifhmongers *v.* East India Co., 1 Dickens, 163; Blakemore *v.* Glamorganshire Canal Co., 1 Mylne & K. 154; Attorney General *v.* Cambridge Gas Co., 4 Ch. App. Cases, 71; Attorney General *v.* Great North, etc., Co., 4 De Ge. & S. 75; State *v.* Saline Co., 51 Mo. 350; State *v.* Crawford, 28 Kan. 726; People *v.* City of St. Louis, 5 Gil. (Ill.) 351; Attorney General *v.* Hunter, 1 Dev. Eq. (N. C.) 12. In the case of People *v.* City of St. Louis, *supra*, the court said: "Independent of any statutory power, the State, as a political corporation, has a right to institute suit in any of her courts, whether it be required by her pecuniary interests or the general public welfare demands it." It was also said: "The jurisdiction of the court over the subject-matter was also undoubted. The court of chancery may grant preventive as well as remedial relief, and this may be done where the act threatened may be punishable under the criminal laws." To much the same effect is the language of the court in Littleton *v.* Fritz, 65 Iowa, 488, S. C. 54 Am. R. 19, where it was said: "There are many adjudged cases aside from those above cited which expressly hold that the fact that a nuisance is a crime and punishable as such does not deprive equity of its jurisdiction to restrain and abate it." The court after citing the cases proceeds thus: "And this rule applies to actions by private individuals and to suits for the benefit and in behalf of the State." The opinion in the case of State *v.* Saunders (N. H.), 18 Lawy. R. Anno. 646, is a very able one, and exhaustively reviews the authorities. It asserts in strong terms the right of the State to invoke equitable aid, and demonstrates the right to equitable relief where the acts are criminal. See, also, Peoples Gas Co. *v.* Tyner, 131 Ind. 277, 283.

[3] Toledo, etc., Co. *v.* Pennsylvania Co., 54 Fed. R. 730, S. C. 19 Lawy. R. Anno. 387; Hagan *v.* Blindell, 56 Fed. R. 696; Casey *v.* Cincinnati, etc., Co., 45 Fed. R. 135, S. C. 12 Lawy. R. Anno. 193. In the case last cited the court said: "No case has been cited where upon a proper showing of facts an unsuccessful appeal has been made to a court of chancery to restrain a boycott." Among the cases cited are

edy against nuisances, the rule being that against private nuisances it may be successfully invoked by an individual, who suffers injury,[1] that against public nuisances it may be obtained only by an individual when he suffers a special injury,[2] and in other cases, that is, cases where the injury is to the public, the remedy must be invoked by the State or the officer designated as its representative.[3] An injunction will lie at the suit of a tax-payer to restrain a municipal corporation from issuing bonds of the municipality for an illegal purpose.[4] So it will for an unlawful invasion of an easement.[5] It is often employed to prevent the collection of illegal taxes,[6] but mere irregularity in assessing the tax is not sufficient

Brace *v.* Evans (Pa.), 3 R. R. & Corp. L. J. 561; Emach *v.* Kane, 34 Fed. R. 46; State *v.* Glidden, 55 Conn. 46; Old Dominion, etc., Co. *v.* McKenna, 30 Fed. R. 48. See, also, Mogul, etc., Co. *v.* McGregor, L. R., 23 Q. B. Div. 598, 624; Buffalo, etc., Co. *v.* Standard Oil Co., 106 N. Y. 669.

[1] Ross *v.* Butler, 19 N. J. Eq. 294; Maine Wharf *v.* Proprietors, 85 Me. 175, S. C. 27 Atl. R. 93; Gardner *v.* Newburgh, 2 Johns. Ch. 161, S. C. 7 Am. Dec. 526; Catlin, etc., Co. *v.* Valentine, 9 Paige, 575, S. C. 38 Am. Dec. 567; Woods on Nuisance, § 887.

[2] Canton, etc., Co. *v.* Potts, 69 Miss. 3, S. C. 10 So. R. 448; Shed *v.* Hawthorne, 3 Neb. 179; Sparhawk *v.* Union, etc., Co., 54 Pa. St. 401; Doolittle *v.* Broome, 18 N. Y. 155; Johnson *v.* Maxwell, 2 Wash. 482, S. C. 27 Pac. R. 1071; O'Brien *v.* Norwich, etc., Co., 17 Conn. 372; Barnes *v.* Racine, 4 Wis. 454; Adams *v.* Ohio Falls Co., 131 Ind. 375, S. C. 31 N. E. R. 57.

[3] Coosac, etc., Co. *v.* South Carolina, 144 U. S. 550. See authorities cited, *ante*, note.

[4] Laughlin *v.* Santa Fe Co., 3 N. M. 264, S. C. 5 Pac. R. 817; Wood County *v.* Boreman, 34 W. Va. 362, S. C. 12 S. E. R. 490; Winn *v.* Shaw, 87 Cal. 631, S. C. 25 Pac. R. 968; Hanson *v.* W. A. Hunter, etc., Co. (Iowa), 34 Am. & Eng. Corp. Cases, 83, S. C. 48 N. W. R. 1005; 2 Dillon Municipal Corp. 776; Fowler *v.* City of Superior (Wis.), 54 N. W. R. 800.

[5] Irwin *v.* Dixion, 9 How. (U. S.) 10; Tapling *v.* Jones, 11 H. L. Cases, 290; Hackett *v.* Baiss, L. R. 20 Eq. 494; Smith *v.* Smith, L. R. 20 Eq. 500; Ross *v.* Thompson, 78 Ind. 90; Olmstead *v.* Loomis, 9 N. Y. 423; Jacobs *v.* Allard, 42 Vt. 303; Bull *v.* Valley Falls, 8 R. I. 42; Wilcox *v.* Wheeler, 47 N. H. 488; Sanderson *v.* Penna. Coal Co., 86 Pa. St. 401; Sheboygan *v.* Sheboygan, etc., Co., 21 Wis. 667.

[6] Small *v.* Lawrenceburgh, 128 Ind. 231, S. C. 27 N. E. R. 500; Pacific, etc., Co. *v.* Seibert, 44 Fed. R. 310; Magruder *v.* Augusta, S. C. 86 Ga. 220, 12 S. E. R. 587; Allen *v.* Pullman, etc., Co. 139 U. S. 658; Topeka, etc., Co. *v.* Roberts, 45 Kan. 360, S. C. 25 Pac. R. 854. See, generally, Hoey *v.* Coleman, 46 Fed. R. 221; Cook *v.* Beatrice, 32 Neb. 80, S. C. 48 N. W. R. 828; Lawrence *v.* Traner, 136 Ill. 474, S. C. 27 N. E. R. 197; Sun *v.* Boone (Tex.), 18 S. W. R. 142; California, etc., Co. *v.* Gowen, 48 Fed. R. 771.

ground for an injunction.[1] It will lie to prevent the enforcement of illegal assessments for street improvements where there is no adequate remedy at law,[2] but if there is an adequate remedy by appeal or *certiorari*, injunction will not lie. Injunction lies to prevent the wrongful interference with the right of lateral support.[3] It lies to prevent injuries to real estate where there is no adequate remedy at law, but as an ordinary fugitive trespass is remediable at law injunction will not lie.[4] If, however, the trespass is a continuous one, likely to produce great injury, an injunction will be awarded.[5] In some of the States a distinction is made between a trespass upon real estate committed under color of authority from a judicial tribunal and a mere naked trespass.[6] Injunction will lie to prevent the clouding of an owner's title by the assertion of an unfounded claim,[7] but some of the courts hold that if the claim is void

[1] Reynolds *v.* Milk Grove, etc., 134 Ill. 268, S. C. 25 N. E. R. 516; Goff *v.* McGee, 128 Ind. 394, 27 N. E. R. 754; Wisconsin, etc., Co. *v.* Ashland County, 81 Wis. 1, S. C. 50 N. W. R. 937; Hixon *v.* Oneida Co., 82 Wis. 515, S. C. 52 N. W. R. 445; Tucker *v.* Sellers, 130 Ind. 514, S. C. 30 N. E. R. 1085; United States Tel., etc., *v.* Grant, 137 N. Y. 7, S. C. 32 N. E. R. 1005.

[2] Lodor *v.* McGovern, 48 N. J. Eq. 275, S. C. 22 Atl. R. 199. See Murdock *v.* Cincinnati, etc., Co., 44 Fed. R. 726; Albrueque *v.* Zegler (N. M.), 27 Pac. R. 515; Elliott on Roads & Sts., 440, 441.

[3] Guest *v.* Reynolds, 68 Ill. 478; Phillips *v.* Bordman, 4 Allen, 147; Humphries *v.* Brogden, 12 Q. B. 739; Rowbotham *v.* Wilson, 8 H. L. Cases, 348.

[4] Indianapolis, etc., Co. *v.* City of Indianapolis, 29 Ind. 245; Thomas *v.* James, 32 Ala. 723; Stevens *v.* Beekman, 1 Johns. Ch. 318; Frink *v.* Stewart, 94 N. C. 484; Waldron *v.* Marsh, 5 Cal. 119; Cowles *v.* Shaw, 2 Iowa, 496; Thorn *v.* Sweeney, 12 Nev. 251; Davidson *v.* Floyd, 15 Fla. 667; Anthony *v.* Sturgis, 86 Ind. 479; Thornton *v.* Roll, 118 Ill. 350.

[5] Graham *v.* Dahlonega, etc., Co., 71 Ga. 296; Doughty *v.* Somerville, etc., 33 N. J. Eq. 1; McPike *v.* West, 71 Mo. 199; Griffith *v.* Hilliard, 64 Vt. 643, S. C. 25 Atl. R. 427; Stetson *v.* Stevens, 64 Vt. 649, S. C. 25 Atl. R. 429.

[6] Erwin *v.* Fulk, 94 Ind. 235; Shimer *v.* Morris, etc., Co., 27 N. J. Eq. 364; Kyle *v.* Board, 94 Ind. 115; City of New Albany *v.* White, 100 Ind. 206; Flood *v.* Van Wormer, 24 N. Y. S. 460. Injunction will lie to prevent a municipal corporation from interfering with property rights under claim that the property is within the corporate limits where the annexation proceedings are void. City of Delphi *v.* Startzman, 104 Ind. 343; Strosser *v.* City of Fort Wayne, 100 Ind. 443; City of Logansport *v.* La Rose, 99 Ind. 117.

[7] Bishop *v.* Moorman, 98 Ind. 1; Thomas *v.* Simmons, 103 Ind. 538; Shanklin *v.* Sims, 110 Ind. 143; Petry *v.* Ambrosher, 100 Ind. 510; Scobey *v.* Walker, 114 Ind. 254; Central, etc., Co. *v.* State, 110 Ind. 203.

on its face an injunction will not be granted. It seems to us that the true rule is that if there be color of right an injunction will lie, for an owner has a right to remove all clouds from his title. The commission of waste may be prevented by injunction.[1] Infringement of patents,[2] copyrights[3] and trade-marks will be enjoined.[4] The exposure of trade secrets will be enjoined where a proper case is made.[5] Equity will in exceptional cases award injunctions to stay proceedings in actions at law,[6] but in such cases equity is reluctant to interfere, so that one who asks its aid must present a strong and clear case. Equity will enjoin the enforcement of illegal contracts where there is no adequate legal remedy. Injunction will lie at the suit of one who has executed a negotiable instrument in a case where there is a valid defense to prevent its transfer to an innocent third person, for to permit the transfer would be to defeat the defense.[7] Injunction is sometimes employed as an

[1] Smith *v.* Rock, 59 Vt. 232; Stout *v.* Curry, 110 Ind. 514; National, etc., Co. *v.* Clarkin, 14 Cal. 544; De La Croix *v.* Villere, 11 La. Ann. 39; Tainter *v.* Mayor, 19 N. J. Eq. 46; Smith *v.* City Council, etc., 19 Ga. 89; Markham *v.* Howell, 33 Ga. 508; Silvia *v.* Garcia, 65 Cal. 591; Lanier *v.* Alison, 31 Fed. R. 100; Kane *v.* Vanderburgh, 1 Johns. Ch. 11; Fleming *v.* Collins, 2 Del. Ch. 230; Allen *v.* Dunlap (Ore.), 33 Pac. R. 675. It was held in Marshall *v.* Turnbull, 32 Fed. R. 124, that a defendant within the jurisdiction of the court may be enjoined from cutting timber in another State. This decision proceeds upon the doctrine referred to in the closing sentence of this section, that, "Equity acts *in personam*."

[2] Goodyear *v.* Day, 2 Wall. Jr. (U. S.) 283; Buchanan *v.* Howland, 5 Blatchf. 151.

[3] Drone on Copyright, 496; Dudley *v.* Mayhew, 3 N. Y. 9; Hogg *v.* Kirby, 8 Vesey, 215; Baker *v.* Taylor, 2 Blatchf. 82.

[4] Hostetter *v.* Vowinkle, 1 Dill. 329; Filley *v.* Fassett, 44 Mo. 68, S. C. 8 Am. L. Reg. (N. S.) 402, note.

[5] Eastman Co. *v.* Reichenback, 20 N. Y. S. 110; Morison *v.* Moat, 9 Hare, 241; Peabody *v.* Norfolk, 98 Mass. 452.

[6] Haynes *v.* Union, etc., Co., 35 Neb. 766, S. C. 53 N. W. R. 979; Haynes *v.* Aultman, etc., Co. (Neb.), 54 N. W. R. 511; Boyd *v.* Weaver (Ind.), 33 N. E. R. 1027; Allen *v.* Buchanan (Ala.), 11 So. R. 777. Injunction is often employed to restrain the sale of land on execution. Bishop *v.* Moorman, 98 Ind. 1. See, generally, Seaside Hotel Co. *v.* Hazelhuro (N. J.), 25 Atl. R. 201; Dudley *v.* Hurst, 67 Md. 44, S. C. 1 Am. St. R. 368; Tucker *v.* Kenniston, 47 N. H. 267, S. C. 93 Am. Dec. 425; Parks *v.* People's Bank, 97 Mo. 130, S. C. 10 Am. St. R. 295; Weed *v.* Bowman, 82 Iowa, 762, S. C. 48 N. W. R. 808.

[7] Metler *v.* Metler, 18 N. J. Eq. 270; Ferguson *v.* Fisk, 28 Conn. 501; Hough *v.* Chaffin, 4 Sneed (Tenn.), 238; Bell

auxiliary remedy where the case has been carried by appeal to an appellate tribunal.[1] We have given instances sufficient to convey, in outline at least, a fair conception of the remedy by injunction and that is all that our purpose requires. It may not be amiss, however, to say in conclusion that the remedy of injunction, like all purely equitable remedies, acts upon the person, so that if the person is within the jurisdiction of the court, equity may enjoin the performance of acts beyond the territorial limits of the State or Nation.[2]

§ 392. **Injunctions—Procedure.**—As an injunction is an extraordinary remedy it does not issue as of course, but the allegations of the bill or complaint must state facts from which the court can infer, as matter of law, that the case is not one remediable in an ordinary civil action. This is especially true where an injunction is asked at the time the suit is commenced or is asked prior to the final decree. The general rule is that a bill or complaint for an injunction must be verified or supported by an affidavit, and some of the cases lay down a very strict rule upon this subject, requiring the verification to be positive and direct.[3] Where a temporary restraining order, or

v. Gamble, 9 Humph. (Tenn.) 117; Burns *v.* Wesner (Ind.), 34 N. E. R. 10.

[1] Leech *v.* State, 78 Ind. 570, 579; Sheeks *v.* Fillion, 3 Ind. App. 262, S. C. 29 N. E. R. 443; Kent *v.* Mahaffy, 2 Ohio St. 498; Elliott's Appellate Procedure, § 512.

[2] In Cole *v.* Cunningham, 133 U. S. 107, 116, there is an elaborate discussion of this subject. See, also, Wilson *v.* Joseph, 107 Ind. 490; Carson *v.* Dunham, 149 Mass. 52; Sercomb *v.* Catlin, 128 Ill. 556, and the old case of Sir William Penn *v.* Lord Baltimore, 1 Vesey, Senior, 444. Under this rule injunctions may issue, although they concern property situated in a jurisdiction different from that over which the court has authority. Allen *v.* Buchanan (Ala.), 11 So. R. 777.

[3] Ballard *v.* Eckman, 20 Fla. 661; Landes *v.* Globe, etc., Co., 73 Ga. 176; Gilroy's Appeal, 100 Pa. St. 5; Reboul's Heirs *v.* Behrens, 5 La. 79; Youngblood *v.* Schamp, 15 N. J. Eq. 42; Southern Plank Road Co. *v.* Hixon, 5 Ind. 165, 168; Bailey *v.* Bailey (Ga.), 16 S. E. R. 90; Boykin *v.* Epstein, 87 Ga. 25, S. C. 13 S. E. R. 15; Ross *v.* Crews, 33 Ind. 120; Wills Point Bank *v.* Bates, 76 Tex. 329, S. C. 13 S. W. R. 309; Davis *v.* Leo, 6 Ves. 784; Smith *v.* Schwed, 6 Fed. R. 455; Lord Byron *v.* Johnston, 2 Merv. 29; Brooks *v.* O'Hara, 8 Fed. R. 529. See, generally, State *v.* Pierce (Kan.), 32 Pac. R. 924; Wing *v.* Fairhaven, 8 Cush. 363; Schemerhorn *v.* L'Espenasse, 2 Dall. 360; Calvert *v.* Gray, 2 Cooper's Ch. 171, note; Wilson *v.* Stolley, 4 McLean, 272; French *v.* Maguire, 55

provisional injunction, is sought without notice it should be prayed for in the complaint or bill,[1] and an emergency should be shown properly requiring the issuing of the order or injunction at once.[2] Where a case is made by the bill or complaint for an interlocutory injunction of any sort, it may be awarded by a judge in vacation or the court in term.[3] In the Federal courts, and, indeed, in many other courts, averments of facts showing that irreparable injury will be inflicted upon the plaintiff entitle him to an immediate order of injunction.[4] The facts, as a rule, must show the urgency for immediate intervention by the court, but it is customary, and in some jurisdictions necessary, to state in explicit terms that an emergency exists for the immediate issuance of an injunction.[5]

How. Pr. R. 471; Ewing *v.* Duncan, 81 Tex. 230, S. C. 16 S.W. R. 1000; St. James' Church *v.* Arrington, 36 Ala. 546; Rhodes *v.* Dunbar, 57 Pa. St. 274; Fort *v.* Groves, 29 Md. 188; Indian, etc., Co. *v.* East, etc., Co., 28 Fla. 387, S. C. 10 So. R. 480; Clark *v.* Lawrence, 6 Jones' Eq. (N. Car.) 83; Attorney General *v.* Steward, 21 N. J. Eq. 340; Savannah, etc., R. Co. *v.* Lancaster, 62 Ala. 555.

[1] Wood *v.* Beadell, 3 Sim. 273. See Rule 21, U. S. Sup. Ct.; Shainwald *v.* Lewis, 6 Fed. R. 766; Leforge *v.* West, 2 Ind. 514; Southern Plank Road Co. *v.* Hixon, 5 Ind. 165; Lewiston, etc., Co. *v.* Franklin Co., 54 Me. 402; College Co. *v.* Moss, 77 Ind. 139. It is, however, held that at the final hearing an injunction may be awarded, although there is no special prayer for it. African Church *v.* Conover, 12 C. E. Green, 157; Walker *v.* Devereaux, 4 Paige, 229, 248. The better and safer practice is to specially pray for an injunction.

[2] Androvette *v.* Bowne, 4 Abb. Pr. (N. Y.) 440; Wallace *v.* McVey, 6 Ind. 300; Andrews *v.* Powell, 27 Ind. 303. See, generally, Yuengeling *v.* Johnson, 1 Hughes, 607.

[3] Temple *v.* Bank of England, 6 Ves. 770; Crawford *v.* Ross, 39 Ga. 44; Pendleton *v.* Dalton, 64 N. Car. 329; Bronenberg *v.* Board, 41 Ind. 502.

[4] Payne *v.* Kansas, etc., Co., 46 Fed. R. 546; Chicago, etc., Co. *v.* Burlington, etc., Co., 34 Fed. R. 481. The term "irreparable injury" is frequently, and, indeed, usually employed, but it is not to be taken in its literal meaning. If the threatened injury is of a very serious nature an injunction will issue, and it is not necessary that it should be such as is impossible to make reparation for, but it must be such as can not be justly compensated in damages. Some of the courts have issued injunctions where the amount in controversy is inconsiderable, but this seems to us a departure from principle. It is to be noted that it is generally where no damages are obtainable, that an injunction may issue, as, for instance, in cases where there is a clear equitable right which in good conscience ought to be vindicated. Clowes *v.* Staffordshire, etc., Co., L.R., 8 Ch. App. 125; Wood *v.* Sutcliffe, 2 Sim. (N. S.) 163.

[5] Hale *v.* Point Pleasant, etc., Co., 23 W. Va. 454; Poyer *v.* Village of Des-

Where there is time to give notice the general rule is that notice of the application must be given,[1] so that cause excusing the giving of notice must be shown by proper averments; otherwise notice must be given of the application. The urgency of immediate assistance from the court may, of course, be shown by the facts pleaded, and this, in strictness, is the proper mode of showing it, since the bare allegation of the existence of an emergency would in the absence of supporting facts be a mere conclusion of law.[2] General allegations of what a party defendant intends to do in the future are not in themselves sufficient to entitle a plaintiff to a restraining order or temporary injunction, but, if there are supporting facts, threats will supply grounds for interference by injunction in a proper case.[3] The supporting facts may exist in previous preparation, prior acts, or in the conduct of the defendant. To entitle a plaintiff to an injunction the allegations of the bill or complaint should be clear and positive.[4] There must be a proper bill or complaint, for an injunction will not issue upon mere affidavits.[5] If the bill or complaint makes a *prima facie* case for an injunction, the writ should issue.[6] In a preceding

plaines, 124 Ill. 310, S. C. 15 N. E. R. 768; Farland *v.* Wood, 35 W. Va. 458, S. C. 14 S. E. R. 140; Portland *v.* Baker, 8 Ore. 356; Leitham *v.* Cusick, 1 Utah Ty. 242; Davis *v.* Reed, 14 Md. 152.

[1] Flagg *v.* Sloan, 16 Ind. 432; Wallace *v.* McVey, 6 Ind. 300; Toledo, etc., Co. *v.* Detroit, etc., Co., 61 Mich. 9, S. C. 27 N. W. R. 715; Androvette *v.* Bowne, 4 Abb. Pr. R. 440; Christie *v.* Bogardus, 1 Barb. Ch. 167; Atchison, etc., Co. *v.* Fletcher, 35 Kan. 236; Real del Monte, etc., Co. *v.* Pond, etc., Co., 23 Cal. 82; Grant *v.* Edwards, 90 N. Car. 31; Trexler *v.* Newson, 88 N. Car. 13; Hirsh *v.* Whitehead, 65 N. Car. 516.

[2] Maloney *v.* Finnegan, 38 Minn. 70, S. C. 36 N. W. R. 723; Davis *v.* Reed, 14 Md. 152; St. Louis *v.* Knapp, 104 U. S. 658; Adams' Eq., 355, 356.

[3] Diedrichs *v.* Northwestern, etc., Co., 33 Wis. 219; Chesapeake, etc., Co. *v.* Patton, 5 W. Va. 234; American, etc., Co. *v.* Southern, etc., 34 Fed. R. 803; St. Louis, etc., *v.* Knapp, 104 U. S. 658.

[4] Blodheim *v.* Moore, 12 Md. 365; Patterson *v.* Bangs, 9 Paige, 627; Perkins *v.* Collins, 3 N. J. Eq. 482; Catlett *v.* McDonald, 13 La. 44; Jones *v.* Macon, etc., Co., 39 Ga. 138; Armstrong *v.* Sanford, 7 Minn. 49; Crocker *v.* Baker, 3 Abb. Pr. (N. Y.) 182; Campbell *v.* Morrison, 7 Paige, 157.

[5] People *v.* New York, 3 Abb. Pr. (N. Y.) 181; Badger *v.* Wagstaff, 11 How. Pr. 562.

[6] Corning *v.* Troy, etc., Factory, 6 How. Pr. 89; Ward *v.* Dewey, 7 How. Pr. 17; Hulce *v.* Thompson, 8 How. Pr. 475; International Tooth Co. *v.* Mills, 22 Fed. R. 659; Gentil *v.* Arnand,

section we stated that in granting a restraining order or temporary injunction the merits of the case were not decided,[1] and it has been held that it will not be granted where the effect of granting it would be to give the plaintiff all the relief he would be entitled to upon a final hearing,[2] but this doctrine, if sound at all, must be taken with qualification, since if it be true that a plaintiff is entitled to the relief at the time he files his bill or complaint the fact that he may secure relief on the final hearing does not deprive him of his right to immediate assistance. The facts essential to the right to an injunction must be stated in the bill or complaint and the pleading can not be aided by an affidavit.[3] As in other suits, the issue for trial must be properly tendered by the bill or complaint and not by collateral instruments. The notice of an application must be served on the party against whom the injunction is asked and the general rule is that it is not sufficient to serve it upon the attorney of the party.[4] But we think there may be cases where notice of an application for an injunction may be served upon the attorney, as, for instance, where the cause is pending in the court where the application is made and the party is a nonresident.[5] Where an order of injunction is granted to continue in force until a designated time the plaintiff must obtain a continuance of the order or it will cease to be operative at that time. Where a time is fixed and notice is given of the application the defendant may move to dissolve without notice or he may oppose the plaintiff's motion for a continuance of the order. The defendant may move to dissolve prior to the time fixed, but he must give notice of the motion. The rule is that in cases where the defendant moves to dismiss at any other time

38 How. Pr. 94. See, generally, People's Gas Co. *v.* Tyner, 131 Ind. 408, S. C. 31 N. E. R. 59; Greenfield Gas Co. *v.* People's Co., 131 Ind. 599, S. C. 31 N. E. R. 61; Akin *v.* Davis, 14 Kan. 143; Olmstead *v.* Koester, 14 Kan. 463.

[1] See, also, Spicer *v.* Hoop, 51 Ind. 365.

[2] Vanveghten *v.* Howland, 12 Abb. Pr. (N. S.) 461.

[3] Leo *v.* Union, etc., Co., 17 Fed. R. 273. See Gilroy's Appeal, 100 Pa. St. 5; Badger *v.* Wagstaff, 11 How. Pr. (N. Y.) 562.

[4] Death *v.* Bank of Pittsburgh, 1 Ia. 382. See, generally, Swift *v.* Brumfield, 76 Ind. 472.

[5] Sawyer *v.* Gill, 3 Wood & M. 97.

than that fixed in the order, he should give notice,[1] but there are exceptions to this general rule. If it appears that great injury will be inflicted upon the defendant by a continuance of the injunction it will be dissolved without notice to the plaintiff.[2] Motions to modify may be made and such motions may be interposed at any time before final decree, and, indeed, where an injunction is embodied in the final decree a motion to modify is proper. Where the decree is too broad or in other respects is not a proper one, the appropriate mode of objecting in many of the States is a motion to modify, but in others the appropriate procedure is to except to the parts of the decree believed to be erroneous. The practice in most jurisdictions is to hear a motion to dissolve or to continue an injunction upon affidavits. The general rule is that where all the material allegations of the complaint or bill are positively denied by the answer the injunction will be dissolved, but the rule upon this subject is not the same in all of the States.[3] A motion to dissolve may, of course, be based upon the insufficiency of the bill or complaint. In many of the States an undertaking or bond is required to be filed before an order of injunction will issue,[4] and where a bond is required, the failure to file one may be cause for dissolving the injunction. But the failure to file a bond does not affect the right of the plaintiff to an injunction upon a final hearing as the relief, or part of the relief, awarded by the final decree, for a bond is only required, as a general rule, where the plaintiff asks and obtains an interlocutory order of injunction. In many of the cases it is said that

[1] Newton Man. Co. *v.* White, 47 Ga. 400; Gravais *v.* Falgoust, 34 La. Ann. 391; Peck *v.* Yorks, 41 Barb. 547. Of course notice may be waived. Chicago, etc., Co. *v.* Estes, 71 Ia. 603, S. C. 33 N. W. R. 124. It is held by some of the courts that a motion to dissolve should specify the grounds upon which it proceeds. Morris, etc., Co. *v.* Bartlett, 3 N. J. Eq. 9; Brown *v.* Winans, 11 N. J. Eq. 267; Miller *v.* Traphagen, 6 N. J. Eq. 200.

[2] Gere *v.* New York, etc., Co., 38 Hun, 231. See, generally, Sledge *v.* Blum, 63 N. Car. 374; Conover *v.* Ruckman, 33 N. J. Eq. 303; Kemper *v.* Campbell, 45 Kan. 529, S. C. 26 Pac. R. 53.

[3] We refer to the interlocutory hearing, not the final hearing. 2 Spelling Ex. Remedies, § 1056; Adams' Eq., 356; Maxwell on Code Pleading, 199.

[4] Adams' Eq., 356, note; Myers *v.* Block, 120 U. S. 206.

it is within the discretion of the court to grant or deny a restraining order or a preliminary injunction,[1] but we suppose that this doctrine can not obtain in any jurisdiction where a right of appeal is given from the order granting or refusing a restraining order or preliminary injunction. It may be doubted whether the rule fully prevails in any jurisdiction, for it seems to us that it would be error to grant an interlocutory order where no cause at all was shown, and, on the other hand, that it would be error to refuse one where good cause is clearly shown. If the ultimate decree gives the plaintiff, or the defendant, as the case may be, all the relief he is entitled to receive, an error in granting or refusing a restraining order or preliminary injunction may be harmless, since the general rule is that where the ultimate judgment or decree is right intervening errors are not harmful.[2] If the ruling is right at the time it is made subsequent changes can not make it wrong,[3] so that if the facts existing at the time the bill or complaint is filed show a right to a restraining order or preliminary injunction the ruling granting it can not be erroneous, although there may subsequently be material changes in the facts. A perpetual injunction can not be awarded until a final hearing, and when awarded it is part of the final decree.[4] It is held by some

[1] Foster's Federal Practice, § 233; Adams' Eq., 356, note; Young *v.* Campbell, 75 N. Y. 525; Olmstead *v.* Koester, 14 Kan. 463.

[2] Elliott's Appellate Procedure, § 590.

[3] Reeder *v.* Maranda, 66 Ind. 485; Cincinnati, etc., Co. *v.* Smith, 127 Ind. 461; Indianapolis, etc., Co. *v.* City of Lawrenceburgh, 37 Ind. 489. See, also, Bonsell *v.* Zigler, 19 Ohio, 362; Elliott's Appellate Procedure, § 589.

[4] 1 Daniell's Ch. Pr. (2 Am. ed.) 1903; Adams *v.* Crittenden, 17 Fed. R. 42. It is not necessary that a preliminary or provisional injunction should be obtained in order to entitle a party to a perpetual injunction. Daniell's Ch. Pr. (2 Am. ed.) 1900; Baily *v.* Taylor, 1 R. & M. 73. The refusal of a preliminary injunction does not deprive a party of a right to a perpetual injunction by final decree. Bacon *v.* Spottiswoode, 1 Beav. 382; Bacon *v.* Jones, 4 M. & C. 433; Tucker *v.* Carpenter, Hempst. 440. As equity may so mold its decrees as to fit the particular case and award complete relief, the court may impose terms upon the parties in granting or refusing injunctions. Southern, etc., Co. *v.* St. Louis, etc., Co., 10 Fed. R. 210, S. C. 10 Fed. R. 289; McCrary *v.* Pennsylvania, etc., Co., 5 Fed. R. 367; Brown *v.* Deere, etc., Co., 6 Fed. R. 487. See, generally, Hayes *v.* Leton, 5 Fed. R. 521; Ewing *v.* Filley, 43 Pa. St. 384; Eno *v.* Metropolitan, etc., Co., 8 N. Y. S. 197.

of the courts that the court granting an injunction may suspend it until an appeal can be taken,[1] but in other jurisdictions the practice is to appeal at once and obtain relief from the appellate tribunal. An appeal from an order dissolving an injunction does not continue the injunction in force, since the effect of an appeal in such cases is not to annul or vacate the order or decree of the court of original jurisdiction.[2] An appeal from a final decree or judgment removes the cause from the court of original jurisdiction to the appellate tribunal, and thus deprives the former court of jurisdiction,[3] so that no steps can be taken by it in vacating or modifying the injunction.[4] To deprive the trial court of jurisdiction the appeal must be actually taken; taking steps looking to an appeal but not constituting an appeal will not remove the cause from the jurisdiction of the trial court.[5] Where the appeal is from an interlocutory order awarding an injunction the whole case is not, of course, carried to the appellate tribunal; hence that tribunal may proceed in the case in so far as it is unaffected by the ap-

[1] Munson *v.* Mayor, 19 Fed. R. 313; Brown *v.* Deere, 6 Fed. R. 487.

[2] Sixth Avenue, etc., Co. *v.* Gilbert, 71 N. Y. 430; Graves *v.* Maguire, 6 Paige, 379; Robertson *v.* Davidson, 14 Minn. 554; Heinlen *v.* Cross, 63 Cal. 44; Hawkins *v.* State, 126 Ind. 294; Central Union, etc., Co. *v.* State, 110 Ind. 203; State *v.* Chase, 41 Ind. 356; State *v.* Dillon, 96 Mo. 56, S. C. 8 S. W. R. 781; Burr *v.* Burr, 10 Paige, 166; First National Bank *v.* Rogers, 13 Minn. 407; Cook *v.* Dickerson, 1 Duer, 679; Burrall *v.* Vanderbilt, 1 Bosw. 637; Ortman *v.* Dixon, 9 Cal. 23.

[3] Allen *v.* Allen, 80 Ala. 154; Boynton *v.* Foster, 7 Metcf. 415; Bryan *v.* Berry, 8 Cal. 130; Boggs *v.* Smith, 53 Cal. 88; Livermore *v.* Campbell, 52 Cal. 75; Elgin Lumber Co. *v.* Langman, 23 Ill. App. 250; State *v.* Duffel, 41 La. Ann. 958; Stephens *v.* Koonce, 106 N. C. 222, S. C. 10 S. E. R. 996; Kimberly *v.* Arms, 40 Fed. R. 548; Ensminger *v.* Powers, 108 U. S. 292; Pierson *v.* McCahill, 23 Cal. 249; Mitchell *v.* United States, 9 Pet. 711; Saltmarsh *v.* Tuthill, 12 How. (U. S.) 387; Bronson *v.* La Crosse, etc., Co., 1 Wall. 405; Stewart *v.* Stringer, 41 Mo. 400, S. C. 97 Am. Dec. 278; Helm *v.* Boone, 6 J. J. Marsh. 351, S. C. 22 Am. Dec. 75; Planters' Bank *v.* Neely, 7 How. (Miss.) 80, S. C. 40 Am. Dec. 51; McLaughlin *v.* Janney, 6 Gratt. 609; McClaughlin *v.* O'Rourke, 12 Iowa, 459; Ladd *v.* Couzins, 35 Mo. 513. See, also, Elliott's Appellate Procedure, § 541.

[4] Fellows *v.* Heermans, 13 Abb. Pr. (N. S.) 1. See, generally, Marble *v.* McKenney, 60 Me. 332; Central, etc., Co. *v.* Standard, etc. Co., 33 N. J. Eq. 372; Doughty *v.* Somerville, etc., Co., 7 N. J. Eq. 629.

[5] State *v.* Kolsem, 130 Ind. 434.

peal,[1] but can not, it is obvious, proceed in the matter fully covered by the appeal, since that part of the case is in the higher court.

§ 393. **Receivers—Generally.**—A receiver is a person appointed by the court to take charge of property pending litigation.[2] The appointment of a receiver is an auxiliary equitable remedy, devised, on account of the inadequacy of any remedy at law, to prevent loss or injury to property in litigation and preserve it, *pendente lite*, for the sake of all interested, to be finally disposed of as the court may decree.[3] A receiver stands indifferent between the parties, and occupies a fiduciary relation to all the creditors.[4] He is, in a sense, an officer of the court, and the court will protect the property in his hands.[5] In the absence of a statute authorizing it he can not be sued, ordinarily at least, without permission of the court by whom he was appointed.[6] So he can only bring suit in his own name when authorized by statute or by the court.[7] As a general rule he derives his title from the debtor, and can only maintain suit where the debtor could have done so.[8] But there are ex-

[1] Miller *v.* Pine, etc., Co. (Idaho), 32 Pac. R. 207.

[2] High on Receivers, § 1; Devendorf *v.* Dickinson, 21 How. Pr. (N. Y.) 275; Merritt *v.* Merritt, 16 Wend. (N. Y.) 405; Baker *v.* Backus, 32 Ill. 79; Foster's Fed. Prac., § 239.

[3] Stitwell *v.* Williams, 6 Madd. 38; Bank of Mississippi *v.* Duncan, 52 Miss. 740; Folsom *v.* Evans, 5 Minn. 418; Myers *v.* Estell, 48 Miss. 372. There are, however, cases where a receiver finally disposes of property as, for instance, under statutes authorizing a receiver to wind up the affairs of a corporation.

[4] Porter *v.* Williams, 9 N. Y. 142; Davis *v.* Gray, 16 Wall. 203, 217.

[5] 3 Pom. Eq. Jur., § 1336; Davis *v.* Gray, 16 Wall. 203, 218; Walling *v.* Miller, 108 N. Y. 173, S. C. 2 Am. St. R. 400.

[6] Barton *v.* Barbour, 104 U. S. 126; Keen *v.* Breckenridge, 96 Ind. 69; Wayne Pike Co. *v.* State, *ex rel.* Whitaker (Ind.), 34 N. E. R. 440; De Graffenried *v.* Brunswick, etc., Co., 57 Ga. 22; Davis *v.* Creamery Co., 128 Ind. 222, S. C. 27 N. E. R. 494; *Re* Christian Jensen Co., 128 N. Y. 550. See, however, Foster's Fed. Prac., § 251, for recent act of Congress authorizing suit in some cases, and Kinney *v.* Crocker, 18 Wis. 74; Allen *v.* Central R. R. Co., 42 Iowa, 683; Lyman *v.* Central, etc., R. R. Co., 59 Vt. 167.

[7] Garver *v.* Kent, 70 Ind. 428; Green *v.* Winter, 1 Johns. Ch. (N. Y.) 60; Wilson *v.* Welch, 157 Mass. 77, 31 N. E. R. 712. See, also, Pendleton *v.* Russell, 144 U. S. 640, S. C. 12 Sup. Ct. Rep. 743. As to when the rule does not apply, see Pouder *v.* Catterson, 127 Ind. 434, S. C. 26 N. E. R. 66.

[8] Jacobson *v.* Allen, 12 Fed. R. 454, 457; La Follett *v.* Akin, 36 Ind. 1;

ceptions to this general rule, for a receiver may sometimes bring suits which the debtor could not maintain. The paramount duty of a receiver is to secure assets for the payment of the debtor's liabilities, and he may for that purpose bring and sustain suits, such as a suit to set aside a fraudulent conveyance made by the debtor, that the latter could not successfully prosecute.[1]

§ 394. **When appointed.**—The appointment of receivers is regulated largely by statute, and provisions are found in the statutes of nearly all the states authorizing the appointment of receivers in certain cases; but courts of equity possess the inherent power to appoint receivers in aid of their jurisdiction in order to accomplish complete justice, and it has been held that a statute providing for the appointment of a receiver in certain designated cases does not abridge or take away this power.[2] It is frequently said that the appointment of a receiver is within the sound discretion of the court,[3] but this does not mean that the court can, without error, arbitrarily appoint a receiver where such appointment is unauthorized and wholly uncalled for, or refuse the appointment where there is a clear, fixed and definite right to have a receiver appointed.[4] It is only in clear cases, however, that the power will be exercised, and, as a general rule at least, there must be a suit pending.[5] A collection of authorities showing in what cases receivers have been ap-

Republic, etc., Co. *v.* Swigert, 135 Ill. 150, S. C. 12 L. R. A. 328.

[1] Graham Button Co. *v.* Spielmann (N. J.), 24 Atl. R. 571.

[2] Bitting *v.* Ten Eyck, 85 Ind. 357. But see Fellows *v.* Heermans, 1 Abb. Pr. N. S. (N. Y.) 7; Colwell *v.* Garfield Nat. Bank, 119 N. Y. 408.

[3] Verplank *v.* Caines, 1 Johns. Ch. (N. Y.) 57; *Ex parte* Walker, 25 Ala. 81; Owen *v.* Homan, 4 H. L. Cas. 997, 1032; Oakley *v.* Paterson Bank, 2 N. J. Eq. 173; Simmons Hardware Co. *v.* Waible, 11 L. R. A. 267, S. C. 47 N. W. R. 814.

[4] Orphan Asylum *v.* McCartee, 1 Hopk. Ch. (N. Y.) 423; Milwaukee R. R. Co. *v.* Soutter, 2 Wall. 510. The action of the trial court is subject to review on appeal. Tysen *v.* Wabash R. R. Co., 8 Biss. 247; Societe Francaise *v.* District Court, 53 Cal. 495.

[5] Pressly *v.* Harrison, 102 Ind. 14; Pressly *v.* Lamb, 105 Ind. 171; Anon, 1 Atl. 578; Crowder *v.* Moone, 52 Ala. 220; National Bank *v.* Kent, 43 Mich. 292; Jones *v.* Bank, 10 Colo. 464; Gold Hunter, etc., Co. *v.* Holleman, 2 Idaho, 839, 27 Pac. R. 413.

pointed will be found in the note below.[1] Mr. Pomeroy classifies the cases upon the subject and states that a receiver may generally be appointed to hold and take charge of property involved in litigation "either where there is no person entitled competent to thus hold it—as for example, in the case of an infant, or in the interval before an executor or administrator of a deceased owner is appointed; or where two or more litigants are equally entitled, but it is not just and proper that either of them should retain it under his control—as, for example, in some suits between partners; or where a person is legally entitled, but there is danger of his misapplying or misusing it, as, for example, in some suits against an executor or administrator, or under some particular circumstances, in suits for the enforcement of a mortgage; or he is appointed in like manner and under like circumstances, for the purpose of carrying into effect a decree of the court concerning the property, as, for example, a decree for the winding up and settlement of a corporation, or the decree in a creditor's suit."[2]

§ 395. **Procedure in obtaining receiver.**—The appointment

[1] See the elaborate note to Cortleyeu *v.* Hathaway, 64 Am. Dec. 482, *et seq.* As to when receivers of corporate property will be appointed, see Lawrence *v.* Greenwich, etc., Co., 1 Paige (N. Y.), 587; Cowdrey *v.* Galveston, etc., R. R. Co., 93 U. S. 352; Ohio, etc., R. R. Co. *v.* Davis, 23 Ind. 553; Meyer *v.* Johnston, 53 Ala. 237; Newell *v.* Smith, 49 Vt. 255; People *v.* Northern R. R. Co., 42 N. Y. 217. Over partnership property, see Saylor *v.* Mockbie, 9 Iowa, 209; Allen *v.* Hawley, 63 Am. Dec. 198; Miller *v.* Jones, 39 Ill. 54; Walker *v.* House, 4 Md. Ch. 39; Bard *v.* Bingham, 54 Ala. 463; Van Alstyne *v.* Cook, 25 N. Y. 489. In foreclosure suits, see Rider *v.* Bagley, 84 N.Y. 461; Connelly *v.* Dickson, 76 Ind. 440; Syracuse Bank *v.* Tallman, 31 Barb. (N. Y.) 201; McLean *v.* Presley, 56 Ala. 211; Grant *v.* Phœnix, etc., Co., 121 U. S. 105; First Nat. Bank *v.* Gage, 79 Ill. 207; Chase's Case, 17 Am. Dec. 277; Main *v.* Ginthert, 92 Ind. 180; Schrieber *v.* Carey, 48 Wis. 208; White *v.* Griggs, 54 Ia. 650; Mercantile, etc., Co. *v.* Missouri, etc., Co., 1 L. R. A. 397, and note. Over trust property, see Jenkins *v.* Jenkins, 1 Paige (N. Y.), 243; Haines *v.* Carpenter, 1 Woods, 262; Johns *v.* Johns, 23 Ga. 31. Over infants' estates, see *Ex parte* Mountfort, 15 Ves. 445; Hardy *v.* McClellan, 53 Miss. 507; Skinner *v.* Maxwell, 66 N. Car. 45. Over lunatics' estates, *Ex parte* Whitfield, 2 Atk. 315; Baker *v.* Backus, 32 Ill. 79; Mitchell *v.* Barnes, 22 Hun (N. Y.), 194. See, generally, Foster's Fed. Prac., § 240; Beach on Receivers, Ch. IV.

[2] 3 Pom. Eq. Jur., § 1330. See, also, Kerr on Receivers, 1, 2.

should generally be prayed for in the original bill,[1] but a receiver may be appointed after decree, although not prayed for in the original bill.[2] He may be appointed upon motion, supported by affidavits, for the purpose of preserving the property, without an inquiry into the merits of the principal case.[3] This may be done even before answer[4] or appearance,[5] but a strong case must be made for the appointment before answer, or it will be refused.[6] Notice must generally be given to the opposite party, and opportunity for a hearing,[7] but notice may be dispensed with and the appointment made *ex parte* in extreme cases where delay would defeat justice or result in irreparable loss or injury.[8] Affidavits may be read in opposition to the motion,[9] and a verified answer may be treated as an affidavit for this purpose.[10] As a general rule the answer is to be taken as true in so far as it is responsive to the bill,[11] in the absence

[1] U. S. Eq., Rule 21.

[2] Connelly *v.* Dickinson, 76 Ind. 440. See, also, Cooke *v.* Gwyn, 3 Atk. 689; Bowman *v.* Bell, 14 Simons, 392; Merritt *v.* Gibson, 129 Ind. 155, S. C. 15 L. R. A. 277; Shannon *v.* Hanks, 88 Va. 338, S. C. 13 S. E. R. 437.

[3] Bitting *v.* Ten Eyck, 85 Ind. 357, 360; High on Receivers, 62–79; Blakeney *v.* Dufaur, 15 Beav. 40, 42; Cooke *v.* Gwyn, 3 Atk. 689; Hottenstein *v.* Conrad, 9 Kan. 435.

[4] Vann *v.* Barnett, 2 Bro. Ch. 158; Williams *v.* Jenkins, 11 Ga. 595; Johns *v.* Johns, 23 Ga. 31; Whitehead *v.* Wooten, 43 Miss. 523; Beach on Receivers, § 110.

[5] Fairfield *v.* Irvine, 2 Russ. 149.

[6] Latham *v.* Chafee, 7 Fed. R. 525; Turnbull *v.* Prentiss Lumber Co., 55 Mich. 387; Clark *v.* Ridgely, 1 Md. Ch. 71.

[7] Tibbals *v.* Sargeant, 14 N. J. Eq. 449; Turgeau *v.* Brady, 24 La. Ann. 348; Jones *v.* Schall, 45 Mich. 379; Whitehead *v.* Wooten, 43 Miss. 523; Field *v.* Ripley, 20 How. Pr. (N. Y.) 26; Ruffner *v.* Mairs, 33 W. Va. 655; State *v.* New Orleans, 43 La. Ann. 829, S. C. 9 So. R. 643; Fredenheim *v.* Rohr, 87 Va. 764, S. C. 13 S. E. R. 193.

[8] Crowder *v.* Moone, 52 Ala. 220; Moritz *v.* Miller, 87 Ala. 331; Cleveland, etc., R. R. Co. *v.* Jewett, 37 Ohio St. 649; Sandford *v.* Sinclair, 8 Paige (N. Y.), 373; Miltenberger *v.* Logansport, etc., R. R. Co., 106 U. S. 286, S. C. 1 Sup. Ct. Rep. 140, 158; French *v.* Gifford, 30 Iowa, 148.

[9] Kean *v.* Colt, 5 N. J. Eq. 365; Micau *v.* Moses, 72 Ala. 439.

[10] Rankin *v.* Rothschild, 78 Mich. 10. In this case counter affidavits were also allowed to be filed by the complainant. See, also, Goodman *v.* Whitcomb, 1 J. & W. 591; Kershaw *v.* Mathews, 1 Russ. 362; Ladd *v.* Harvey, 21 N. H. 514; Sobernheimer *v.* Wheeler, 45 N. J. Eq. 614; Allen *v.* Dallas, etc., R. R. Co., 3 Woods, 316, 332.

[11] Thompsen *v.* Diffenderfer, 1 Md. Ch. 489; Simmons *v.* Henderson, 1 Freem. (Miss.) 493; Buchanan *v.* Comstock, 57 Barb. (N. Y.) 568; Callanan *v.* Shaw, 19 Iowa, 183.

of proof to the contrary.[1] The order of appointment should clearly designate the property over which the receiver is appointed,[2] and the court may embody such directions and impose such conditions therein as are just and proper.[3] A receiver may be removed upon motion[4] or upon the application of the receiver himself,[5] for good cause shown, or the court may remove him of its own motion for misconduct, for insufficient security, or the like.[6] The entire matter, however, is within the sound discretion of the court.[7] A receiver may also be discharged and the receivership terminated, in a proper case, upon the application of a third person as well as upon that of either of the parties or the receiver himself.[8] Where the object of the receivership has been fully accomplished the receiver will be discharged,[9] and so, generally, when he has been improperly appointed,[10] or, by some subsequent change in the condition of affairs, it is for the best interest of all the parties that he should be discharged.[11] The application for the removal or discharge

[1] Under the present practice affidavits may generally be read in opposition to the answer. 2 Dan. Chanc. Pl. & Pr. 1736; Rankin *v.* Rothschild, 78 Mich. 10.

[2] Crow *v.* Wood, 13 Beav. 271; O'Mahoney *v.* Belmont, 62 N. Y. 133; 2 Dan. Chanc. Pl. & Pr. 1737.

[3] United States Trust Co. *v.* New York, etc., R. R. Co., 25 Fed. R. 800; Central Trust Co. *v.* St. Louis, etc., R. R. Co., 41 Fed. R. 551; West *v.* Chasten, 12 Fla. 315; Lewis *v.* Lord Zouche, 2 Sim. 388, 393.

[4] Davis *v.* Michelbacher (Wis.), 31 N. W. R. 160; 2 Dan. Chanc. Pl. & Pr. 1765.

[5] Richardson *v.* Ward, 6 Madd. 266. But he must show a good reason or excuse for not serving, or the court will refuse to remove him on his own application after he has once accepted the appointment. 2 Dan. Chanc. Pl. & Pr. 1765.

[6] Beach on Receivers, § 783; Sage *v.* Memphis, etc., R. R. Co., 18 Fed. R. 571; Shackelford's Adm'r *v.* Shackelford, 32 Gratt. (Va.) 481; Handy *v.* Cleveland, etc., R. R. Co., 31 Fed. R. 689.

[7] Beach on Receivers, § 776.

[8] Thomas *v.* Brigstocke, 4 Russ. 64; Grenfell *v.* Dean, 2 Beav. 544; Crook *v.* Findley, 60 How. Pr. (N. Y.) 375; Foster's Fed. Prac., § 260; Beach on Receivers, § 793.

[9] Langdon *v.* Vermont, etc., R. R. Co., 53 Vt. 228; *In re* Colvin, 3 Md. Ch. 278; *In re* Long Branch, etc., R. R. Co., 24 N. J. Eq. 398; Tempest *v.* Ord. 1 Madd. 59.

[10] Lavender *v.* Lavender, Ir. Rep., 9 Eq. 593; Walters *v.* Anglo-Am., etc., Co., 50 Fed. R. 316; Popper *v.* Scheider, 7 Abb. Pr. N. S. (N. Y.) 56; Copper Hill, etc., Co. *v.* Spencer, 25 Cal. 11; Sage *v.* Memphis, etc., R. R. Co., 18 Fed. R. 571, S. C. 125 U. S. 361.

[11] Ferry *v.* Bank, 15 How. Pr. (N. Y.) 445; Davy *v.* Gronow, 14 L. J. (N. S.)

of a receiver is usually made by motion, and notice thereof should be given both to the parties[1] and to the receiver.[2]

§ 396. **Lis pendens notice.**—It is often important to file with the bill, complaint or declaration, what is commonly called a *lis pendens* notice. This is required in many States in order to make the suit or action operate as notice to persons who acquire an interest in the property involved in the litigation subsequent to the commencement of the suit or action. We do not here employ the term *lis pendens* in the sense, often attributed to it, of a step essential to giving jurisdiction over property or of keeping property within the jurisdiction of the court.[3] The fundamental rule is that notice *lis pendens* applies only to the property involved in the litigation.[4] There is no notice *lis pendens* where the suit or action only incidentally concerns specific property or where the title is only collaterally involved. It is obvious that it is only in the classes of actions ordinarily denominated real or mixed that notice *lis pendens* is usually effective, for in actions purely *in personam*, the only relief obtainable is a judgment for a money recovery.[5] In the

Ch. 134; Bainbrigge *v.* Blair, 3 Beav. 421.

[1] Davis *v.* Duke of Marlborough, 2 Swanst. 113; Bainbrigge *v.* Blair, 3 Beav. 421; Attrill *v.* Rockaway Beach Imp. Co., 25 Hun (N. Y.), 376. Compare Coburn *v.* Ames, 57 Cal. 201; New York, etc., Co. *v.* Jewett, 115 N. Y. 166.

[2] Dougherty *v.* Jones, 37 Ga. 348; Smith *v.* Trenton, etc., Co., 4 N. J. Eq. 505; Burns *v.* Stewart Mfg. Co., 31 Hun (N. Y.), 195; Att'y General *v.* Haberdashers' Society, 2 Jur. 915. But, compare Howard *v.* Lowell Machine Works, 75 Ga. 325; L'Engle *v.* Florida Cent. R. R. Co., 14 Fla. 266; Herman *v.* Dunbar, 23 Beav. 312.

[3] Newman *v.* Chapman, 2 Rand. (Va.) 93; Murray *v.* Ballou, 1 Johns. Ch. 566.

[4] Feighley *v.* Feighley, 7 Md. 537; Houston *v.* Timmerman, 17 Ore. 499, S. C. 11 Am. St. R. 848, S. C. 4 L. R. A. 716; Jones *v.* McNarrin, 68 Me. 341; Murray *v.* Finster, 2 Johns. Ch. (N. Y.) 155; Green *v.* Rick, 121 Pa. St. 130, S. C. 6 Am. St. R. 760.

[5] Briscoe *v.* Branough, 1 Tex. 326; Gardner *v.* Peckham, 13 R. I. 102; St. Joseph Mfg. Co. *v.* Daggett, 84 Ill. 556. See, also, McLaurine *v.* Monroe, 30 Mo. 462; Chase *v.* Searles, 45 N. H. 511; Winston *v.* Westfeldt, 22 Ala. 760, S. C. 58 Am. Dec. 278; County of Warren *v.* Marcy, 97 U. S. 96; Murray *v.* Lylburn, 2 Johns. Ch. (N. Y.) 441. But, compare Diamond *v.* Lawrence Co., 37 Pa. St. 353, S. C. 78 Am. Dec. 429; Kellogg *v.* Fancher, 23 Wis. 21, S. C. 99 Am. Dec. 96; Mims *v.* West, 38 Ga. 18, S. C. 95 Am. Dec. 379; McCutchen *v.* Miller, 31 Miss. 65.

latter class of cases there is no *res* to be directly affected by the judgment so that there is nothing upon which notice can operate. Where, however, either real or personal property is directly involved in the action there may be notice *lis pendens*.[1] The filing of a proper complaint or declaration containing a sufficient description of the property, accompanied by service of the subpœna or summons, is, under the old common law and equity systems, notice to subsequent purchasers, but by statute in many of the States this is not enough, for the pleading must be supplemented by a written notice registered or recorded in the proper office.[2] Where the old rule prevails the accepted doctrine is that the initial point of notice *lis pendens* is the service of the subpœna or summons.[3]

§ 397. **Notice—Statutory.**—It is, of course, essential to conform to the statutory requirements as to the form, filing and registry of notice in those States where the statute requires that the complaint or declaration be supplemented by what is called a *lis pendens* notice. An important part of the notice is the description of the property which it is the object of the proceeding to reach and subject to a lien, or to which it is sought to establish title. If the description is defective in a material particular the notice will be insufficient.[4]

[1] There can, of course, be no question as to the general doctrine of *lis pendens* where the controversy directly concerns real property, and some of the authorities declare that where the right to personal property is in issue, the doctrine is the same, but this is denied in others. Scudder *v.* Van Amburgh, 4 Edw. Ch. 29; Taylor *v.* Jones, 2 Atk. 600; Hadden *v.* Sprader, 20 Johns. 554; Leitch *v.* Wells, 48 N. Y. 585; Farnham *v.* Campbell, 10 Paige, 598; Thoms *v.* Southard, 2 Dana, 475; Buford *v.* Keokuk, etc., Co., 3 Mo. App. 159; Carr *v.* Lewis, 15 Mo. App. 551. See Carr *v.* Lewis, 96 Mo. 149, 8 S. W. R. 907; Miles *v.* Lefi, 60 Ia. 168. It applies where real estate is attached. Bell *v.* Gaylord (N. Mex.), 27 Pac. R. 494.

[2] Smith *v.* Gale, 144 U. S. 509, S. C. 12 Sup. Ct. R. 674; Jones *v.* Smith, 40 Fed. R. 314; Bennett on Lis Pendens, 349; 13 Am. & Eng. Encyc. of Law, 894; Jones on Mortgages, § 1409.

[3] Walker *v.* Goldsmith, 14 Ore. 125; Hayden *v.* Bucklin, 9 Paige (N. Y.), 512; Allen *v.* Mandaville, 26 Miss. 397; Rothchild *v.* Kohn (Ky.), 19 S. W. R. 180; Hayden *v.* Thrasher, 28 Fla. 162, 9 So. R. 855; Lincoln Rapid Transit Co. *v.* Rundle (Neb.), 52 N. W. R. 563; 2 Pom. Eq. Jur., 74; note to Newman *v.* Chapman, 14 Am. Dec. 774.

[4] Houston *v.* Timmerman, 17 Ore. 499, S. C. 11 Am. St. R. 848; 2 Pom.

§ 398. **Doctrine of relation.**—Where a notice is sufficient and is duly filed and registered or recorded it relates to the commencement of the suit or action, at least in cases where it is filed with the complaint or declaration.[1] This is in accordance with the general principles governing the doctrine of relation. The notice when given in proper form and manner is in contemplation of law part of the procedure in the case, and takes effect, unless the statute otherwise provides, when the suit or action is commenced, but in this respect much depends upon the provisions of the statute in the particular jurisdiction. It is important to properly designate the suit or action to which the notice refers, since it is the suit or action which really constitutes the *lis pendens*. The notice of itself is not sufficient to affect title, for title is the subject of the suit or action and depends upon the judgment given therein.

§ 399. **Continuance of the notice.**—The notice *lis pendens* continues from the time it takes effect until final judgment in the court of original jurisdiction.[2] Some of the cases hold that it extends beyond the judgment in the trial court and covers the time allowed for appeal.[3] It seems to us that the true rule is that it ceases to be effective with the final judgment unless steps are immediately taken to appeal and the record is made to fully disclose the proceedings.

Eq. Jur., 76; Freeman on Judgments, §§ 196, 197; Badger *v.* Daniel, 77 N. Car. 251; Miller *v.* Sherry, 2 Wall. 237; Ray *v.* Roe, 2 Blackf. (Ind.) 258.

[1] Sherman *v.* Bemis, 58 Wis. 343; Stern *v.* O'Connell, 35 N. Y. 104.

[2] Ashley *v.* Cunningham, 16 Ark. 168; Debell *v.* Foxworthy, 9 B. Mon. (Ky.) 228; Herrington *v.* McCollum, 73 Ill. 476; Page *v.* Waring, 76 N. Y. 463; Ludlow's Heirs *v.* Kidd's Exr., 3 Ohio, 541.

[3] Gilman *v.* Hamilton, 16 Ill. 225; Krug *v.* Davis, 101 Ind. 75.

CHAPTER XII.

THE INSTRUMENTS OF EVIDENCE.

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§ 400. **Proper instruments must be selected.**—Where issues of fact are joined between opposing parties, evidence is required. This evidence must be placed before the court and jury by proper instruments, and in accordance with the rules of law. One might as well be without evidence as without the instruments or means of presenting it to the tribunal which it is hoped to convince or persuade. Not only, therefore, must the advocate be prepared with evidence, but he must also be prepared with the instruments[1] for conveying it to the triers of his cause, and the rules governing such instruments and their application to the particular case, should be known and determined in advance of the trial in order that the advocate may properly present the facts to the jury.[2]

[1] This includes witnesses, for "a witness is a means or instrument of evidence." Rapalje's Law of Witnesses, § 1.

[2] "An advocate is expected to come prepared with a knowledge of all the rules and principles of evidence." E. W. Cox.

§ 401. **General suggestions.**—In many instances there is no choice; the very best instruments attainable must be employed. Thus, where the contract of the parties has been reduced to writing, the instrument, and the only instrument which can be employed, to communicate the evidence to the court, is the writing itself. The operation of this rule may in many cases be avoided, as, for instance, where the instrument has been lost or destroyed, or is in the hands of the adverse party, or in the hands of a person beyond the reach of the court. If the instrument can not be obtained, then it is necessary to proceed, as the law provides, to substitute some other instrument of evidence. It is not to be forgotten that the best instrument must be obtained and used, if care and diligence can secure it, and that it is only where the best can not be secured by care and diligence that an inferior instrument will be accepted.[1] This care and diligence consists in doing, at the proper time and in the proper method, what the law requires. He who proposes to employ an inferior instrument will do well to make sure that he is prepared to show that nothing more could reasonably be done to secure the best.

§ 402. **Primary and secondary evidence.**—Primary evidence is the best of which the case will in its nature admit; all other evidence is secondary, and of secondary evidence there are no degrees.[2] Written documents are the best evidence of their contents and must speak for themselves.[3] Telegrams are writ-

[1] "Evidence, in order to be receivable, should come through proper instruments, and be in general original and proximate."

[2] Tayloe *v.* Riggs, 1 Peters (U. S.), 591; Richardson *v.* Milburn, 17 Md. 67; Brown *v.* Woodman, 6 C. & P. 206; Goodrich *v.* Weston, 102 Mass. 362, S. C. 3 Am. R. 469; Eslow *v.* Mitchell, 26 Mich. 500; Carpenter *v.* Dame, 10 Ind. 125. Compare Cornett *v.* Williams, 20 Wall. (U. S.) 226; Higgins *v.* Reed, 8 Iowa, 298; Nason *v.* Jordan, 62 Me. 480; Illinois Land, etc., Co. *v.* Bonner, 75 Ill. 315.

[3] Williams *v.* Jones, 12 Ind. 561; Sebree *v.* Dorr, 9 Wheat. (U. S.) 558; Perrin *v.* State, 81 Wis. 135, S. C. 50 N. W. Rep. 516; Louisville, etc., R'y Co. *v.* Orr, 94 Ala. 602, S. C. 10 So. R. 167; Atwood *v.* Cobb, 16 Pick. (Mass.) 227, S. C. 26 Am. Dec. 657; Schwass *v.* Hershey, 125 Ill. 623; note to Ferguson *v.* Rafferty, 6 L. R. A. 33; Memphis, etc., R. R. Co. *v.* Benson, 85 Tenn. 627, S. C. 4 Am. St. R. 776. Other

ten instruments within the meaning of this rule;[1] and so are maps, letters, and hand bills.[2] Instruments signed in duplicate are both original;[3] but letter-press copies are not.[4]

§ 403. **General rule—Best evidence must be produced.**—It is a general rule that the best evidence of which the case is susceptible must be produced.[5] This rule is adopted for the prevention of fraud, and is essential to the pure administration of justice. It does not demand the greatest amount nor the strongest possible evidence, but only requires that such evidence as is introduced shall be primary evidence, that is, the best of which the case in its nature admits.[6]

§ 404. **Exceptions to rule—Where secondary evidence is admissible.**—As the law does not require impossibilities and as statutory provisions, public policy and even convenience may determine how far a general rule is applicable to particular cases, it will be found that the general rule stated in the last section, like most others, is subject to exceptions, of which the following are the most important: 1. Where one is acting as a public officer it is generally unnecessary to produce the certificate of his election or appointment.[7] 2. Certified copies of

authorities are cited in the following notes.

[1] Matteson *v.* Noyes, 25 Ill. 591; United States *v.* Babcock, 3 Dill. C. Ct. 571; Anglo-American, etc., Co. *v.* Cannon, 31 Fed. R. 313; Smith *v.* Easton, 54 Md. 138; Howley *v.* Whipple, 48 N. H. 487:

[2] Pool *v.* Myers, 21 Miss. 466; Guerin *v.* Hunt, 6 Minn. 375; Hanson *v.* Armstrong, 22 Ill. 442. And ballots are the best evidence of the intention and choice of the voters. Hartman *v.* Young, 17 Ore. 150, S. C. 2 L. R. A. 596.

[3] Totten *v.* Bucy, 57 Md. 446.

[4] Anglo-American, etc., Co. *v.* Cannon, 31 Fed. R. 313; Foot *v.* Bentley, 44 N. Y. 166; Marsh *v.* Hand, 35 Md. 123. For this reason, and because there are no degrees of secondary evidence, it has been held that where a letter is shown to have been lost a verified copy of the letter-press copy is competent evidence the same as the letter-press copy itself, and that the latter need not, therefore, be produced. Goodrich *v.* Weston, 102 Mass. 362, S. C. 3 Am. R. 469.

[5] Clifton *v.* United States, 4 How. 242; Comer *v.* Hart, 79 Ala. 389; Morton *v.* White, 16 Me. 53; Wells *v.* Jackson, etc., Co., 48 N. H. 491; Bassett *v.* Marshall, 9 Mass. 312; Holliday *v.* Harvey, 39 Texas, 670; Clow *v.* Brown (Ind.), 31 N. E. R. 361.

[6] United States *v.* Reyburn, 6 Peters, 352; St. Louis, etc., Co. *v.* Chapman, 38 Kan. 307.

[7] United States *v.* Reyburn, 6 Peters, 352; Wilcox *v.* Smith, 5 Wend. (N.Y.) 231; Fowler *v.* Bebee, 9 Mass. 231; 1 Rice on Ev., 150.

public records are admissible where the law authorizes the record to be kept and the instrument to be recorded.[1] 3. Where the items of an account are very numerous and intricate or documents are very voluminous and all that is essential is a summary or calculation, a qualified witness may make it and give parol evidence thereof.[2] 4. Inscriptions on tombstones, walls, buildings, or other immovables, may be proved by oral evidence.[3] 5. Where a writing is not within the jurisdiction of the court and can not be reached by its process parol evidence may be given of its contents.[4] 6. Where its production is physically impossible, as in case of its loss, or is in the highest degree inconvenient, parol evidence of its contents may be admitted upon a proper showing.[5] 7. Where it is in the hands of the opposite party, who fails, after due notice, to produce it, parol evidence of its contents is also admissible.[6] 8. And the same is true where it is in the hands of a stranger who can not be compelled by legal authority to produce it, and who declines, after service of proper process, to produce it.[7]

[1] Wells, Fargo, etc., Co. *v.* Davis, 105 N. Y. 670, S. C. 12 N. E. R. 42; Hunt *v.* Order of Chosen Friends, 64 Mich. 671, S. C. 31 N. W. R. 576; Blanchard *v.* Young, 11 Cush. (Mass.) 341; Hammond *v.* Johnston, 93 Mo. 198, S. C. 6 S. W. R. 83; Pepoon *v.* Jenkins, 2 Johns. Cas. 119; 1 Rice on Ev., 150. Compare Russell *v.* Glasser, 93 Mo. 353, 6 S. W. R. 362.

[2] Meyer *v.* Sefton, 2 Starkie, 244; Burton *v.* Driggs, 20 Wall. 125; Home Ins. Co. *v.* Baltimore, etc., Co., 93 U. S. 527; Von Sachs *v.* Kretz, 72 N. Y. 548; Culver *v.* Marks, 122 Ind. 554, 566; Stephen's Ev., Art. 71; 1 Greenl. Ev., § 93; Taylor's Ev., § 432.

[3] Bartholomew *v.* Stephens, 8 C. & P. 728; 1 Greenl. Ev., § 94.

[4] Smith *v.* Traders' Nat. Bank, 82 Texas, 368, S. C. 17 S. W. R. 779; Burton *v.* Driggs, 20 Wall. 125, 134; Otto *v.* Trump, 115 Pa. St. 425, S. C. 8 Atl. R. 786; Shepard *v.* Giddings, 22 Conn. 282; Rex *v.* Johnson, 7 East, 65.

[5] Rex *v.* Hunt, 3 B. & Ald. 566; Mortimer *v.* McCallam, 6 M. & W. 58; Sebree *v.* Dorr, 9 Wheat. (U. S.) 558; De Lane *v.* Moore, 14 How. (U. S.) 253; Stebbins *v.* Duncan, 108 U. S. 32; McNutt *v.* McNutt, 116 Ind. 545, S. C. 2 L. R. A. 372; Western Union Tel. Co. *v.* Collins (Kan.), 10 L. R. A. 515; Smith *v.* Arthur, 110 N. Car. 400, S. C. 15 S. E. R. 197; Roehl *v.* Haumesser, 114 Ind. 311.

[6] State *v.* Lockwood, 5 Blackf. (Ind.) 144; United States *v.* Winchester, 2 McLean, 135; Portier *v.* Barclay, 15 Ala. 439; Winslow *v.* State, 92 Ala. 78, S. C. 9 So. R. 728; Morse *v.* Woodworth, 155 Mass. 233, S. C. 29 N. E. R. 525; Keagle *v.* Pessell, 91 Mich. 618, S. C. 52 N. W. R. 58; Cahen *v.* Continental Life Ins. Co., 69 N. Y. 300.

[7] Roscoe's Crim. Ev., 11; Taylor's Ev., 407; Mills *v.* Oddy, 6 C. & P. 728; Hervey *v.* Edens, 69 Tex. 420, S. C. 6 S.W. R. 306; Otto *v.* Trump, 115 Pa. St. 425. See, also, Jackson *v.* Burtis, 14

9. So where the document is first brought to notice on the examination of a witness on his *voir dire* the court may admit parol evidence of its contents.[1]

§ 405. **Laying the foundation for secondary evidence.**—As already shown, there are cases in which secondary evidence may be admissible because primary evidence can not be obtained. But in order to render such evidence admissible a foundation must first be laid for its introduction. Thus, where a written instrument is the best evidence, but can not be procured because the instrument is lost, parol evidence of its contents is not admissible until the fact of its loss is proved and diligent search for it is shown to have been made.[2] So, where the instrument is out of the jurisdiction of the court, in the hands of a stranger, or in the possession of the opposite party, and, indeed, in all cases in which secondary evidence is sought to be introduced upon the ground that primary evidence could not be obtained, the facts justifying its introduction must be shown before it will be admitted.

§ 406. **Notice to produce documents.**—Where the writing is in the possession or control of the adverse party, notice to produce it should be served upon him, or his attorney, a reasonable time before trial, in order to let in secondary evidence of

Johns. (N.Y.) 391; People *v.* Benjamin, 9 How. Pr. (N.Y.) 419; Durkee *v.* Leland, 4 Vt. 612; Thompson-Houston Electric Co. *v.* Palmer (Minn.), 53 N. W. R. 1137.

[1] Rex *v.* Gisburn, 15 East, 57; Butcher's Co. *v.* Jones, 1 Esp. 160; Miller *v.* Mariners' Church, 7 Me. 51.

[2] Anglo-American, etc., Co. *v.* Cannon, 31 Fed. R. 313; Gordon *v.* State, 48 N. J. L. 611, S. C. 7 Atl. R. 476, and note; Myers *v.* Bealer, 30 Neb. 280, S. C. 46 N. W. R. 479; Berdel *v.* Egan, 125 Ill. 298; Kearney *v.* New York, 92 N. Y. 617; Trammell *v.* Hudmon, 86 Ala. 472; Low *v.* Tandy, 70 Tex. 745; note to Martin *v.* Williams, 97 Am. Dec. 456; Simpson *v.* Dall, 3 Wall. (U. S.) 460; Perrin *v.* State, 81 Wis. 135, S. C. 50 N. W. R. 516; Yavapai Co. *v.* O'Neil (Ariz.), 29 Pac. R. 430; Collar *v.* Collar, 86 Mich. 507, S. C. 13 L. R. A. 621. As to what is sufficient diligence, see Daly *v.* Bernstein (N. Mex.), 28 Pac. R. 764; Waggoner *v.* Alvord, 81 Texas, 365, S. C. 16 S. W. R. 1083; Gray *v.* Thomas, 83 Texas, 246, S. C. 18 S. W. R. 721; Darrow *v.* Pierce, 91 Mich. 63, S. C. 51 N. W. R. 813; Buchanan *v.* Wise (Neb.), 52 N. W. R. 163; Hotchkiss *v.* Mosher, 48 N. Y. 478; Bascom *v.* Toner, 5 Ind. App. 229, S. C. 31 N. E. R. 856.

its contents in case it is not produced.[1] If there is reason to believe that it is in the hands of the opposite party, it is safest to give notice to produce it even though he has denied having it.[2] It is also safest to give the notice in writing,[3] but a verbal notice has been held sufficient in the absence of a statute requiring it to be in writing.[4] The notice should contain a particular description of the book or document called for and must be reasonably certain and explicit.[5] What is a reasonable notice, as to time, depends largely upon the circumstances of each particular case, such as the distance of the document from the court or the like.[6] Notice given to produce a paper at the trial is sufficient although the case is not tried until a subsequent term,[7] and it will even be good at any subsequent trial, without a second notice.[8] The effect of a proper notice is to render secondary evidence of the contents of the document admissible

[1] Jefford *v.* Ringgold, 6 Ala. 544; Cody *v.* Hough, 20 Ill. 43; Durkee *v.* Leland, 4 Vt. 612; Grimes *v.* Fall, 15 Cal. 63; Muller *v.* Hoyt, 14 Tex. 49; Farmers', etc., Bank *v.* Lonergan, 21 Mo. 46; Anderson Bridge Co. *v.* Applegate, 13 Ind. 339; Rogers *v.* Van Hoesen, 12 Johns. (N. Y.) 221; Shreve *v.* Dulany, 1 Cranch. (U. S.) 499; Roberts *v.* Dixon, 50 Kan. 436, S. C. 31 Pac. R. 1083; Pitt *v.* Emmons, 92 Mich. 542, S. C. 52 N. W. R. 1004. But there are cases in which it has been held that service of notice to produce is unnecessary, as where it is alleged in a pleading that the adverse party has possession of the document. Hardin *v.* Kretsinger, 17 Johns. (N. Y.) 293; Forward *v.* Harris, 30 Barb. (N. Y.) 338; Nealley *v.* Greenough, 25 N. H. 325; How *v.* Hall, 14 East, 273; Scott *v.* Jones, 4 Taunt. 865. Or has obtained possession of it by force or fraud. Scott *v.* Pentz, 5 Sandf. (N. Y.) 572; Leeds *v.* Cook, 4 Esp. 256; Morgan *v.* Jones, 24 Ga. 155.

[2] Grimm *v.* Hamel, 2 Hilt. (N. Y.) 434.

[3] Cummings *v.* McKinney, 5 Ill. 57.

[4] Houseman *v.* Roberts, 5 C. & P. 394; Cates *v.* Winter, 3 Term R. 306; Kerr *v.* McGuire, 28 N. Y. 446.

[5] Bogart *v.* Brown, 5 Pick. (Mass.) 18; France *v.* Lucy, Ry. & M. 341; United States *v.* Duff, 6 Fed. Rep. 45; Stalker *v.* Gaunt, 12 N. Y. Leg. Obs. 124; Taylor's Ev., § 413; 1 Wharton's Ev. (3d ed.) 154, note. It should also be entitled in the cause, but this is not material if the party is not misled. Lawrence *v.* Clark, 14 Mees. & W. 250. See, also, Frank *v.* Manny, 2 Daly (N. Y.), 92.

[6] Utica Ins. Co. *v.* Caldwell, 3 Wend. (N. Y.) 296; McPherson *v.* Rathbone, 7 Wend. (N. Y.) 216; Littleton *v.* Clayton, 77 Ala. 571; Dewitt *v.* Prescott, 51 Mich. 298; Shreve *v.* Dulany, 1 Cranch. (U. S.) 499.

[7] Jackson *v.* Shearman, 6 Johns. (N. Y.) 19.

[8] Hope *v.* Beadon, 17 Q. B. 509; Rawson *v.* Knight, 73 Me. 340.

in case it is not produced.[1] The instrument must, however, be shown by competent evidence to be in the possession or control of the opposite party,[2] Where the document is in the possession of a third person it may generally be brought into court by means of a *subpœna duces tecum*,[3] but where he is not within the jurisdiction of the court, it has been held that secondary evidence of the contents of the instrument will be admitted without a notice to produce it.[4] As a stranger might voluntarily bring it into court, however, although he could not be compelled to, it seems to us that the party desiring to introduce secondary evidence in such a case should show that he had made reasonable efforts to obtain the original document.

§ 407. **Depositions.**—It is better, as we have elsewhere shown, to bring the witnesses into the presence of the jury, but this can not always be done. It is often necessary to take the testimony of witnesses in the form of depositions. When depositions of material witnesses are to be taken the prudent course is, where practicable and not forbidden, for the advocate to attend the examination in person, or to secure the attendance of counsel fully informed as to the issues, the material points of the case, and the facts of which the witness is supposed to have knowledge. It is not always easy to frame a series of questions that will fully elicit the facts, nor, indeed, is it easy to prepare questions that are not liable to mislead or confuse the witness. If an examining counsel is present errors may be corrected, obscurities removed, plain questions substituted for obscure ones, and the testimony be brought out with much more force and clearness than by written questions.

§ 408. **Rules governing the taking of depositions.**—The

[1] McKellip *v.* McIlhenny, 4 Watts. (Pa.) 317, S. C. 28 Am. Dec. 711; Com. *v.* Goldstein, 114 Mass. 272; Augur Steel, etc., Co. *v.* Whittier, 117 Mass. 451; Life and Fire Ins. Co. *v.* Mechanics', etc., Co., 7 Wend. (N. Y.) 31; Pangborn *v.* Continental Insurance Co. (Mich.), 29 N. W. R. 475.

[2] Birkbeck *v.* Tucker, 2 Hall (N.Y.), 121; Reilly *v.* Lee, 16 N. Y. Supp. 313. But slight evidence has been held sufficient. Robb *v.* Starkey, 2 Car. & K. 143; Norton *v.* Heywood, 20 Me. 359.

[3] Thomp. Tr., § 175.

[4] Shepard *v.* Giddings, 22 Conn. 282.

rules of practice to be observed in taking depositions are those provided by the statute of the State or country from which the commission or *dedimus* issues, and not those obtaining in the jurisdiction where the witness is found, unless they are the same.[1] A commissioner appointed to take testimony can not delegate his authority.[2] Notice must be given of the time and place of taking the deposition. Where the time for which notice is required to be given is not specifically fixed by statute, a reasonable notice should be given,[3] and in determining its sufficiency the courts will take judicial notice of distances, and facilities for travel.[4] The notice must describe the place of taking the deposition with reasonable certainty.[5] When necessary, the officer may continue the taking from day to day until it is completed.[6] Although not required in all jurisdictions, it is safest to have the witness sworn before the examination.[7] Where the deposition is taken in the ordinary man-

[1] City Bank *v.* Young, 43 N. H. 457; Bostwick *v.* Lewis, 1 Day's Cases, 33; Thompson *v.* Wilson, 34 Ind. 94. So the act of Congress governs in the taking of depositions to be used in the United States courts. Randall *v.* Venable, 17 Fed. R. 162. Compare McClaskey *v.* Barr, 47 Fed. R. 154. The statute should be followed in all material respects. Gulf, etc., Co. *v.* Evansich, 61 Tex. 3; Simpson *v.* Carleton, 1 Allen (Mass.), 109; Simpson *v.* Dix, 131 Mass. 179; Johnson *v.* Perry, 54 Vt. 459; Baxter *v.* Payne, 1 Pinn. 501.

[2] Cappeau *v.* Middleton, 1 Har. & G. 154; Urquhart *v.* Burleson, 6 Tex. 502. But it seems that where the officer before whom the deposition is to be taken is not required to be specified in the notice, naming a particular officer therein will not render the deposition invalid because it is taken before another officer. Harvey *v.* Osborn, 55 Ind. 535. The only mode by which a deposition can be taken in a foreign country is under a commission. Stein *v.* Bowman, 13 Peters (U. S.), 209.

[3] Henthorn *v.* Doe, 1 Blackf. 157; Cefret *v.* Burch, 1 Blackf. 400; Attwood *v.* Fricot, 17 Cal. 37, S. C. 76 Am. Dec. 567.

[4] Hipes *v.* Cochran, 13 Ind. 175; Manning *v.* Gasharie, 27 Ind. 399; Carlisle *v.* Tuttle, 30 Ala. 613.

[5] Rodman *v.* Kelly, 13 Ind. 377; Harris *v.* Hill, 7 Ark. 452. But defects in the notice may be waived by an appearance at the taking of the deposition without objection. Prather *v.* Pritchard, 26 Ind. 65; Doe *v.* Brown, 8 Blackf. 443; George *v.* Nichols, 32 Me. 179. And a change in the place named without objection will not be cause for suppressing the deposition. Gartside Coal Co. *v.* Maxwell, 20 Fed. R. 187. As to what the notice should contain, and for the usual form, see Weeks on Depositions, Ch. VII.

[6] Ulmer *v.* Austill, 9 Port. (Ala.) 157; King *v.* State, 15 Ind. 64. But the time to which an adjournment is made should be stated. Bennett *v.* Bennett, 37 W. Va. 396, S. C. 16 S. E. R. 638.

[7] Stonebreaker *v.* Short, 8 Pa. St. 155;

ner, and not by interrogatories previously prepared, the party against whom it is to be used has a right to cross-examine the witness.[1] Objections to the form of a question, as leading or the like, or as to the manner of taking the deposition, should, as a rule, be made at the time.[2] In some jurisdictions objections to the competency of the witness must be made before trial; in others they may be made at or during the trial.[3] Provision is also generally made for taking depositions by interrogatories previously prepared, and, in such case, no cross-examination is allowed, except by cross-interrogatories, and the mere presence of the attorney of either party at the taking has been held sufficient cause for rejecting a deposition.[4] All pertinent and proper interrogatories and cross-interrogatories must be answered.[5] Where depositions are taken under a commission, they should be subscribed by the witness, although it has been held sufficient by some of the courts if the fact that the witness was duly sworn appears from the certificate;[6] and the signature of the commissioner seems to be absolutely necessary.[7] Exhibits should be referred to in the body of the deposition and marked and annexed thereto, or otherwise clearly identified.[8]

Thieband *v.* Sebastian, 10 Ind. 454; Fisk *v.* Tank, 12 Wis. 276, S. C. 78 Am. Dec. 737. But, see Tooker *v.* Thompson, 3 McLean, 92; Barron *v.* Peter, 18 Vt. 385.

[1] Dannefelser *v.* Weigel, 27 Mo. 45; Stille *v.* Layton, 2 Harr. (Del.) 149; Laidley *v.* Rogers, 22 N. Y. Supp. 468.

[2] Croft *v.* Rains, 10 Tex. 520; Crowell *v.* Bank, 3 Ohio St. 406; Chambers *v.* Hunt, 22 N. J. L. 552; Donnell *v.* Jones, 13 Ala. 490, S.C. 48 Am. Dec. 59.

[3] See authorities cited in "Rules of Practice on Taking Depositions," 22 Cent. L. J. 581, 585. Unless the practice is clearly settled, however, it is safest to make the objection at the earliest opportunity, and, if necessary, it can be repeated at the trial.

[4] Hollister *v.* Hollister, 6 Pa. St. 449.

[5] Nicholson *v.* Desobry, 14 La. Ann. 81; Kimball *v.* Davis, 19 Wend. (N. Y.) 437. But portions not responsive to the interrogatories will be excluded on motion. McCarver *v.* Nealey, 1 Greene (Ia.), 360; Lee *v.* Stowe, 57 Tex. 444.

[6] See 22 Cent. L. J. 581, 584, and authorities cited. See, also, Celluloid Mfg. Co. *v.* Arlington, etc., Co., 47 Fed. R. 4.

[7] Price *v.* Emerson, 16 La. Ann. 95.

[8] Brumskill *v.* James, 11 N. Y. 294; Dailey *v.* Green, 15 Pa. St. 118; Weidner *v.* Conner, 9 Pa. St. 78; Dodge *v.* Israel, 4 Wash. C. C. 323; Mobley *v.* Leophart, 51 Ala. 587; Gimbel *v.* Hufford, 46 Ind. 125; Huston *v.* Roots, 30 Ind. 461; Toby *v.* Oregon Pac. R. R. Co. (Cal.), 33 Pac. R. 550.

§ 409. **Certificate—What it should show.**—The statutes of the various States usually prescribe what the certificate should show, and where they do not it is safest, though held unnecessary in some cases, to show that all the statutory steps have been taken.[1] Where the certificate is informal or defective it may be amended by the officer on leave of court.[2] When a commission is addressed to a resident of another State by name, no proof of his official character or signature is necessary;[3] but where the officer has no seal, and is not named in the commission, his certificate is generally required to be authenticated under the seal of a court of record.[4]

§ 410. **Return and publication.**—After the deposition is duly taken and authenticated it should be placed in an envelope, properly sealed, and returned with the commission to the court from which it issued. The provisions of the statute should be followed and the names of the parties and witnesses should be indorsed on the envelope, which should then be addressed and mailed to the clerk of the court in which the action is pending. In a recent case it was held, under a statute providing that the deposition should be delivered by the officer taking it, with his own hand, into the court for which it was taken, or by him sealed up and forwarded to such court either by mail or express, and remain under his seal until opened in court, that a deposition sent by mail in a sealed envelope was not admissible where the envelope was neither sealed with wax bearing an impression of the notary's seal nor indorsed by the

[1] See 22 Cent. L. J. 581, 585, and authorities cited. Also, Madison, I. & P. R. R. Co. *v.* Whitesel, 11 Ind. 55; Thieband *v.* Sebastian, 10 Ind. 454; Simpson *v.* Carleton, 1 Allen, 109, S. C. 79 Am. Dec. 707, and note 716; Western Union Tel. Co. *v.* Collins, 45 Kan. 88, S. C. 25 Pac. R. 187, S. C. 10 L. R. A. 515.

[2] Donahue *v.* Roberts, 19 Fed. R. 863; Gartside Coal Co. *v.* Maxwell, 20 Fed. R. 187; Wolfe *v.* Underwood (Ala.), 12 So. R. 234; Conger *v.* Cotton, 37 Ark. 286; Oatman *v.* Andrew, 43 Vt. 466; Jenkins *v.* Anderson (Pa.), 11 Atl. R. 558; Eller *v.* Richardson, 89 Tenn. 575, S. C. 15 S. W. R. 650. Compare Galveston, etc., R. R. Co. *v.* Matula, 79 Tex. 577, S. C. 15 S. W. R. 573.

[3] Bradford *v.* Cooper, 1 La. Ann. 325; Kendall *v.* Limberg, 69 Ill. 355.

[4] Baber *v.* Rickhart, 52 Ind. 594; Jenkins *v.* Tobin, 31 Ark. 306; Wheeler *v.* Shields, 2 Scam. (Ill.) 348.

notary.[1] But this seems to us to be an exceedingly strict construction of the statute, and the general rule is that a substantial compliance with the statutory requirements is sufficient.[2] After the deposition is returned it should be filed and published. The publication may be made upon the motion of either party.[3]

§ 411. **Motion to suppress.**—Where a deposition is fatally defective because of the failure to comply with some statutory requirement, it is proper to move to suppress it before the trial;[4] but objections to particular questions or answers are generally made in the same manner as upon the examination of a witness in court. A motion to strike out improper answers may also be resorted to. Objections to the validity or admissibility of depositions by motion to suppress, or otherwise, must be specific,[5] and the order suppressing the deposition, or any part of it, must be definite and certain.[6]

§ 412. **Use of depositions.**—The provisions of the statute will, of course, determine under what circumstances depositions may be taken and used; but they are usually permitted to be taken where a witness is out of the jurisdiction, aged and infirm, sick, or going abroad, to be used in the event of his inability to attend the trial.[7] Under many of the statutes sat-

[1] Travers *v.* Jennings (S. Car.), 17 S. E. R. 849.

[2] Goodyear *v.* Vosburg, 41 How. Pr. (N. Y.) 421; Hall *v.* Barton, 25 Barb. (N. Y.) 274; Egbert *v.* Citizens' Ins. Co., 7 Fed. R. 47; Whittaker *v.* Voorhees, 38 Kan. 71, S. C. 15 Pac. R. 874; Killian *v.* Augusta, etc., R. R. Co., 78 Ga. 749, S. C. 3 S. E. R. 621; Weeks on Depositions, §§ 343, 362. The objection that the names of the witnesses are not indorsed upon the envelope must precede the publication. Lingenfelser *v.* Simon, 49 Ind. 82.

[3] The practice varies somewhat in different States. In some the depositions may be published or opened as a matter of course, while in others an order of court is necessary. Weeks on Depositions, § 448.

[4] Weeks on Depositions, §§ 365, 378. See, also, Bibb *v.* Allen, 149 U. S. 481, S. C. 13 Sup. Ct. Rep. 950. Holding that a motion to suppress came too late when made upon the day for which the trial was set.

[5] Hunt *v.* Bailey, 4 Ind. 630; Pettigrew *v.* Barnum, 11 Md. 434, S. C. 69 Am. Dec. 212; Maggart *v.* Freeman, 27 Ind. 531; Commercial Bank *v.* Union Bank, 11 N. Y. 203; Whittaker *v.* Sigler, 44 Iowa, 419.

[6] Hays *v.* Hynds, 28 Ind. 531.

[7] Norris *v.* Norris, 3 Ind. App. 500,

isfactory proof of the inability of the witness to attend or of the impossibility of procuring or compelling his attendance must be made before the deposition can be used upon the trial,[1] but in Illinois it has been held that the deposition of a witness may be read although he is present in court,[2] and in Indiana it has been held that when the deposition of a witness who does not reside in the county of the trial, or in an adjoining county, has been taken by one party, the fact that the other party has procured his attendance and examined him during the trial, will not prevent the party who took the deposition from reading it if the witness has been discharged and is not in court at the time the deposition is offered.[3] A deposition taken at the instance of one party, and not used by him, may be read in evidence by the opposite party.[4] The deposition of a witness taken in another action relating to the same subject-matter and between the same parties in interest may also be read in evidence, where the witness has died in the meantime.[5]

S. C. 28 N. E. R. 1014; Hunsinger *v.* Hofer, 110 Ind. 390; Pollard *v.* Lively, 2 Gratt. (Va.) 216; Commercial Bank *v.* Whitehead, 4 Ala. 637; Goodwyn *v.* Lloyd, 8 Port. (Ala.) 237.

[1] Emlaw *v.* Emlaw, 20 Mich. 11; Chicago, etc., R. R. Co. *v.* Brown, 44 Kan. 384, 24 Pac. R. 497; Whitford *v.* County of Clark (U.S.), 7 Sup. Ct. R. 306; Memphis, etc., Co. *v.* Maples, 63 Ala. 601; Jackson *v.* Rice, 3 Wend. (N. Y.) 180; Park *v.* Willis, 1 Cranch, C. C. 357; Sax *v.* Davis, 71 Ia. 406, 32 N. W. R. 403; Everett *v.* Tidball (Neb.), 52 N. W. R. 816; Weeks on Depositions, § 476. The reasons for using the deposition must exist at the time of the trial. Stockton *v.* Graves, 10 Ind. 294; Haun *v.* Wilson, 28 Ind. 296; Indianapolis, etc., R. R. Co. *v.* Stout, 53 Ind. 143. See, also, Hewlett *v.* George, 68 Miss. 703, S. C. 13 L. R. A. 682.

[2] Bradley *v.* Geiselman, 17 Ill. 571.

[3] Shirts *v.* Irons, 37 Ind. 98. See, also, Ables *v.* Miller, 12 Texas, 109; Phenix *v.* Baldwin, 14 Wend. (N. Y.) 62; Barton *v.* Trent, 3 Head. (Tenn.) 167.

[4] Citizens' Bank *v.* Rhutasel, 67 Ia. 316; Adams *v.* Russell, 85 Ill. 284; Woodruff *v.* Garner, 39 Ind. 246; Byers *v.* Orensstein, 42 Minn. 386, 44 N. W. R. 129; Rucker *v.* Reid, 36 Kan. 468; Chase *v.* Springvale Mills, 75 Me. 156; Dana *v.* Underwood, 19 Pick. (Mass.) 99; Fountain *v.* Ware, 56 Ala. 558; McClintock *v.* Curd, 32 Mo. 411. But it has been held that where this is done the party at whose instance it was taken may object to improper interrogatories propounded by himself. Hatch *v.* Brown, 63 Me. 410. See, also, Gilpins *v.* Consequa, Pet. C. C. 85. See, generally, Weeks on Depositions, § 465, *et seq.*

[5] Philadelphia, etc., Co. *v.* Howard, 13 How. (U. S.) 307; Goodrich *v.* Hanson, 33 Ill. 498; Leviston *v.* French, 45 N. H. 21; Berney *v.* Mitchell, 34 N. J. L. 337; Adams *v.* Raigner, 69 Mo. 363;

But depositions taken in one suit can not be used in another against a person who was not a party to the former suit and had no opportunity to cross-examine the witness.[1] Depositions read at the trial of a cause may be used upon a new trial of the same cause.[2] And a deposition read without objection can not afterwards be excluded because of any known defect existing at the time it was read;[3] but it has been held that an agreement that a deposition may be used upon all trials of the same cause does not render an objectionable portion of it admissible where the objection is seasonably made.[4]

§ 413. **Waiver of objections.**—It is a safe rule to make objections at the earliest opportunity. Appearing and taking part in the examination may constitute a waiver of many objections,[5] and, as a general rule, all formal objections such as might be remedied by amendment or retaking the deposition should be made before the trial.[6] But objections that go to

Earl *v.* Hurd, 5 Blackf. (Ind.) 248; Eckman *v.* Eckman, 68 Pa. St. 460. But see Sewall *v.* Robbins, 139 Mass. 164, in which the subject-matter was different. So, it may be used if the witness is beyond the jurisdiction of the court. Weeks on Depositions, § 470.

[1] Rutherford *v.* Geddes, 4 Wall. (U. S.) 220; Tappan *v.* Beardsley, 10 Wall. (U. S.) 427; Earl *v.* Hurd, 5 Blackf. (Ind.) 248; Borders *v.* Barber, 81 Mo. 636; Turnley *v.* Hanna (Ala.), 2 So. R. 483; Cookson *v.* Richardson, 69 Ill. 137; Bartelott *v.* International Bank, 119 Ill. 259. "Identity of subject-matter in whole or in part, and identity of parties in interest must unite to render a deposition in one case admissible in another." Fearn *v.* West Jersey Ferry Co., 143 Pa. St. 122, 13 L. R. A. 366, 369.

[2] Spence *v.* Smith, 18 N. H. 587; Pulaski *v.* Ward, 2 Rich. (So. Car.) 119; Walton *v.* Walton, 63 Vt. 513, S. C. 22 Atl. R. 617. So held where they had been read by consent upon the first trial. Vattier *v.* Hinde, 7 Peters (U. S.), 252; Edmondson *v.* Barrell, 2 Cranch C. C. 228, 232.

[3] Evans *v.* Hettich, 7 Wheat. (U. S.) 453; Brackett *v.* Nikirk, 20 Ill. App. 525.

[4] Bridgham's Appeal, 82 Me. 323.

[5] Barnhardt *v.* Smith, 86 N. Car. 473; Shutte *v.* Thompson, 15 Wall. 151; Long *v.* Straus, 124 Ind. 84; Doe *v.* Brown, 8 Blackf. (Ind.) 443; Waldron *v.* St. Paul, 33 Minn. 87; Goodfellow *v.* Landis, 36 Mo. 168; Weil *v.* Silverstone, 6 Bush. (Ky.) 698; Milton *v.* Rowland, 11 Ala. 732; Nevan *v.* Roup, 8 Iowa, 207; Quadras *v.* Webster, 11 La. Ann. 203; Cameron *v.* Cameron, 15 Wis. 1; Weeks on Depositions, §§ 276, 277, 424, *et seq.* *Contra*, where a party's attorney is merely present and takes no part. Harris *v.* Wall, 7 How. (U. S.) 692; Beasley *v.* Downey, 10 Ired. (N. Car.) 284.

[6] Holman *v.* Bachus, 73 Mo. 49;

the substance, such as the competency and relevancy of the evidence, if they are unknown and not disclosed by the deposition, may generally be made upon the trial.[1] So, the taking of a deposition to break the force of the deposition of the same witness previously taken by the other party has been held not to be a waiver of objections to the competency of the witness.[2] Notwithstanding an objection or a motion to suppress a deposition is made in the trial court, if it does not appear to have been ruled on, it will be deemed, on appeal, to have been waived.[3]

§ 414. **Discovery—Examination of party before trial.**—In former times the manner of obtaining a discovery in aid of an action at law was usually by filing a bill of discovery in a court of equity, but this practice has been largely superseded, under modern statutes, by filing interrogatories with the pleadings, to be answered by the opposite party,[4] or by examining him outside of court in much the same way as depositions are taken.[5]

Memphis, etc., R. R. Co. *v.* Maples, 63 Ala. 601; Truman *v.* Scott, 72 Ind. 258; Doane *v.* Glenn, 21 Wall. 33; Claxton *v.* Adams, 1 McArthur, 496; Bell *v.* Jamison, 102 Mo. 71; Uhle *v.* Burnham, 44 Fed. Rep. 729; Stull *v.* Howard, 26 Ind. 456; Glenn *v.* Clore, 42 Ind. 60; Wright *v.* Cabot, 89 N. Y. 570; Sheldon *v.* Burry, 39 Ill. App. 154; Delisle *v.* McGillivary, 24 Mo. App. 680; Akers *v.* Demond, 103 Mass. 318; Rowe *v.* Godfrey, 16 Me. 128; Newton *v.* Porter, 69 N. Y. 133; Gregory *v.* Dodge, 14 Wend. (N. Y.) 593; Weeks on Depositions, §§ 392, 440.

[1] Memphis, etc., R. R. Co. *v.* Maples, 63 Ala. 601; Robinius *v.* Lister, 30 Ind. 142; Tays *v.* Carr, 37 Kan. 141, 14 Pac. R. 456; Leavitt *v.* Baker, 82 Me. 26, S. C. 19 Atl. R. 86; Smithwick *v.* Anderson, 2 Swan (Tenn.), 573; Tallot *v.* Clark, 8 Pick. (Mass.) 51; Corgan *v.* Anderson, 30 Ill. 95; Swift *v.* Castle, 23 Ill. 209; Adams *v.* Wadleigh, 10 Gray (Mass.), 360; Pittsburgh, etc., R. R. Co. *v.* Theobald, 51 Ind. 246; Myers *v.* Murphy, 60 Ind. 282.

[2] Ætna Life Ins. Co. *v.* Deming, 123 Ind. 384.

[3] Hanks *v.* Van Garder, 59 Ia. 179; Graydon *v.* Gaddis, 20 Ind. 515; McGinnis *v.* Gabe, 78 Ind. 457; Garvin *v.* Luttrell, 10 Humph. (Tenn.) 16; Cameron *v.* Cameron, 15 Wis. 1; Fant *v.* Miller, 17 Gratt. (Va.) 187; Corn *v.* Sims, 3 Met. (Ky.) 391; Weeks on Depositions, § 441. This is, indeed, the general rule in all cases. The objection should be duly made, a ruling obtained, and an exception taken to the ruling.

[4] 11 Am. & Eng. Ency. of Law, 526, 534; Fels *v.* Raymond, 139 Mass. 98; Tillinghast *v.* Nourse, 14 Ga. 641; Cates *v.* Thayer, 93 Ind. 156, 157; Sherman *v.* Hogland, 73 Ind. 472; Hill *v.* Nisbet, 100 Ind. 341; Rice *v.* Derby, 7 Ind. 649.

[5] Barnard *v.* Flinn, 8 Ind. 204; Ma-

It has been held that one who has complied with an order to answer interrogatories may also be compelled to testify as a witness,[1] and this seems to us to be the true rule, but in New York it seems that the examination of a party before trial precludes a further examination, in regard to the same subject-matter, upon the trial.[2] A party will not be compelled to answer an interrogatory which tends to criminate himself or expose him to fines, penalties and forfeitures.[3]

§ 415. **Choice of instruments of evidence.**—There is sometimes a choice between the instruments of evidence. Thus, where several persons have seen an occurrence, and of the several some are good and some bad, choice may be made of the good to the exclusion of the bad. A few good witnesses, intelligent, frank, well-mannered, and of good repute, are better than many, if of the many a considerable number are bad. In proving reputation, it is of great importance that the best witnesses at command be obtained, and this is true where reputation is assailed. But the instance we have given is by no means the only one in which it is of importance to secure the best witnesses, although, perhaps, in cases which it represents the importance of securing the very best witnesses is greater in degree than in ordinary cases.

§ 416. **Competency should be ascertained before trial.**—Whether a person can be used as an instrument of evidence depends upon whether he is a competent witness in the particular case. If he is not competent in that case, then he is

son *v.* Weston, 29 Ind. 561; Helms *v.* Green, 105 N. Car. 251, S. C. 18 Am. St. R. 893, 898; McVickar *v.* Greenleaf, 4 Rob. (N. Y.) 657; Havemeyer *v.* Ingersoll, 12 Abb. Pr. (N. S.) 301; Jacksonville, etc., Co. *v.* Peninsular Land, etc., Co. (Fla.), 9 So. R. 661. He can simply be required to answer as to his own knowledge, however, and not as to who his witnesses are and what they told him. Wabash, etc., R'y Co. *v.* Morgan, 132 Ind. 430, 31 N. E. R. 661, 663.

[1] Smith *v.* Rosenham, 19 Ind. 256.

[2] Wilmont *v.* Meserole, 8 J. & S. 321. But see Clark *v.* Vorce, 15 Wend. (N. Y.) 193; Helms *v.* Green, 105 N. Car. 251, S. C. 18 Am. St. R. 893.

[3] French *v.* Venneman, 14 Ind. 282; Boyd *v.* United States, 116 U. S. 616, S. C. 6 Sup. Ct. Rep. 524, 533; Thornton *v.* Adkins, 19 Ga. 464; 11 Am. & Eng. Encyc. of Law, 533; Adams' Eq., 2; 1 Pom. Eq. Jur., § 202.

not an instrument of evidence. A person may be unworthy of credit and yet be competent; in that event he is an instrument of evidence, although not an effective one. It is necessary, therefore, to ascertain in advance of the trial whether the witness is, or is not, competent; for, if he is not, he can not be employed as a means of communicating facts to the court, and a careful advocate would search elsewhere for an effective instrument.

§ 417. **Tendency of modern legislation.**—The tendency of modern legislation has been for years towards a practical emancipation of witnesses from the strict rules of the common law disqualifying them on account of interest, relationship, or the like, so that competency is now the rule and incompetency the exception. In some States, however, the legislature has gone further than in others, and counsel should, therefore, consult the statutes of his own State. For this reason and for the further reason that this subject is more properly within the domain of a treatise on the law of evidence than it is within the scope of a book upon general practice, we shall not treat it in detail, but shall content ourselves with a statement of the general rules, and a brief consideration of the most important phases of the subject that counsel ought to keep in mind in securing evidence and preparing his case for trial upon the facts.

§ 418. **Competency to be determined by court—How.**—The competency of a witness is for the court to determine,[1] and his credibility is for the jury.[2] Incompetency of a witness will not be presumed, and where a witness is objected to as in-

[1] City of Ft. Wayne *v.* Coombs, 107 Ind. 75; Duncan *v.* Welty, 20 Ind. 44; Davis *v.* State, 35 Ind. 496; Commercial Bank *v.* Hughes, 17 Wend. (N.Y.) 94; Reynolds *v.* Lounsbury, 6 Hill (N. Y.), 534; Tucker *v.* Welsh, 17 Mass. 160; Cook *v.* Mix, 11 Conn. 432; Chouteau *v.* Searcy, 8 Mo. 733.

[2] Nelson *v.* Vorce, 55 Ind. 455; Dodd *v.* Moore, 91 Ind. 522; Moore *v.* State, 68 Ala. 360; Bowers *v.* People, 74 Ill. 418; Mechelke *v.* Bramer, 59 Wis. 57; Worthington *v.* Mencer (Ala.), 11 So. R. 72; Springfield *v.* State (Ala.), 11 So. R. 250; Nat. Bank *v.* Mills, 99 N. Y. 656, S. C. 2 N. E. R. 27; Sharp *v.* State, 14 Am. St. R. 27, and note.

competent, if the facts on which the objection is based are disputed, the judge must determine his competency; and that this may be done intelligently the witness may be examined on his *voir dire*, and other evidence may be heard by the judge to contradict him and show his incompetency.[1]

§ 419. **Objections to competency.**—The party objecting has the right to begin the preliminary examination as to competency, and the other party may cross-examine. Objection to the competency of a witness should, if the grounds of the objection are known, be made before the commencement of his examination in chief.[2] Where the incompetency of a witness is discovered after he has been sworn and has given part of his evidence objection may then be made and such evidence should be withdrawn, and the jury instructed to disregard it.[3] If a party calls a witness, incompetent as against himself, to testify on any point, or knowingly permits him to be examined without objection at the earliest opportunity, he is presumed to have waived all objection on that ground, and the witness may be examined at large.[4] A waiver of objection to the competency of a witness operates upon all his testimony, and stands throughout the entire trial.[5] A party who once objects, and

[1] Best's Ev., § 133; Rapalje's Law of Witnesses, §§ 171, 174; Bartlett *v.* Smith, 11 M. & W. 483; Nave *v.* Williams, 22 Ind. 368; 1 Greenl. Ev., § 425. In cases of doubt, however, it seems that courts are disposed to receive the witness and let the jury judge of his credibility. 1 Best's Ev., § 133, *Ib.*, § 144. And on principle, and, perhaps, upon authority, when a party who objects to a witness as incompetent chooses to examine him upon his *voir dire*, he can not, as a matter of right, contradict him by other evidence. See Stebbins *v.* Sackett, 5 Conn. 258, 261; 1 Greenl. Ev., § 423; Rapalje's Law of Witnesses, § 175.

[2] Lewis *v.* Morse, 20 Conn. 211; Kingsbury *v.* Buchanan, 11 Iowa, 387; Stuart *v.* Lake, 33 Me. 87; Groshom *v.* Thomas, 20 Md. 234; Inglebright *v.* Hammond, 19 Ohio, 337; Jackson *v.* Jackson, 5 Cow. (N. Y.) 173; Patterson *v.* Wallace, 44 Pa. St. 88; Donelson *v.* Taylor, 8 Pick. (Mass.) 390.

[3] Jacobs *v.* Layborn, 11 M. & W. 685; Brockbank *v.* Anderson, 7 Man. & Gr. 295; Stout *v.* Wood, 1 Blackf. 71; Fisher *v.* Willard, 13 Mass. 379; 1 Greenl. Ev., § 421; Rapalje's Law of Witnesses, § 173.

[4] Varick *v.* Jackson, 2 Wend. 166, S. C. 19 Am. Dec. 571, and note, 579; 1 Greenl. Ev., § 421; Donelson *v.* Taylor, 8 Pick. 390, 392; Stockton *v.* Demuth, 7 Watts, 39, S. C. 32 Am. Dec. 735; Seip *v.* Torch, 52 Pa. St. 210.

[5] Choteau *v.* Thompson, 3 Ohio St.

preserves his objection, does not lose the benefit of it by subsequently introducing evidence to contradict the testimony of the witness, nor does he lose the benefit by cross-examining the witness.[1] Objections to the competency of a witness should be specifically stated.[2] To make an objection to the competency of a witness available on appeal, the record should show the specific objections stated to the trial court and the reason of his incompetency, as well as the ruling and exception.[3]

§ 420. **Incompetency—Grounds of objection.**—We are here dealing with the question of the competency of the witness and not with the question of the admissibility of some particular portion of his evidence, and in such a case the objection should, of course, be based upon some ground of incompetency. Under the modern statutes,[4] insanity of the witness at the time his testimony is offered and infancy are the chief grounds of incompetency. It is also commonly provided that neither party shall be competent to testify as to a transaction with a person since deceased where the evidence would be inimical to the estate.[5] In some of the statutes the provision upon this

424; Beall *v.* Lynn, 6 Harr. & Johns. (Md.) 336.

[1] Boylan *v.* Meeker, 4 Dutch. (N. J.) 274; Carpenter *v.* Ginder, 1 Wis. 243.

[2] Bunker *v.* Gilmore, 40 Me. 88; White Water Valley Co. *v.* Dow, 1 Ind. 141; Pegg *v.* Warford, 7 Md. 582; Brown *v.* State, 24 Ark. 620; State *v.* Levy, 5 La. Ann. 64.

[3] Emory *v.* Owings, 3 Md. 178; Grant *v.* Levan, 4 Pa. St. 393; Bates *v.* Barber, 4 Cush. 107; Rapalje's Law of Witnesses, § 179.

[4] See Rapalje's Law of Witnesses, Ch. VIII, where the provisions of the various statutes upon this subject are quoted in full.

[5] In the following recent cases evidence was held inadmissible under the statute: Mills *v.* Davis, 113 N. Y. 243, S. C. 3 L. R. A. 394; Holcomb *v.* Holcomb, 95 N. Y. 316; Consolidated Ice Co. *v.* Keifer, 134 Ill. 481, S. C. 10 L. R. A. 696; Harris *v.* Bank, 22 Fla. 501, S. C. 1 Am. St. R. 201; Emmel *v.* Hayes, 102 Mo. 186, S. C. 22 Am. St. R. 769; Blood *v.* Fairbanks, 50 Cal. 420; Taylor *v.* Duesterberg, 109 Ind. 165; Ketcham *v.* Hill, 42 Ind. 64; Clift *v.* Shockley, 77 Ind. 297; Randall's Adm'r *v.* Randall, 64 Vt. 419, S. C. 24 Atl. R. 1011; Bressler *v.* Baum, 42 Ill. App. 190; Mersmier *v.* McCrary (Mo.), 21 S.W. R. 17; Ewing *v.* White, 8 Utah, 250, S. C. 30 Pac. R. 984; Joss *v.* Mohn (N. J.), 26 Atl. R. 987; Bowie *v.* Bowie (Md.), 26 Atl. R. 405; Hurry *v.* Kline (Ky.), 20 S.W. R. 277. Held competent and admissible in the following cases, as not within the prohibition of the statute: Hess *v.* Lowrey, 122 Ind. 225, S. C. 7 L. R. A. 90; South Baltimore,

subject is much broader than in others. Provisions are also found in most of them to the effect that attorneys, physicians, clergymen and husband or wife shall not be competent to testify as to confidential communications, without the consent of the party making them.[1] Where the objection is upon the ground of the insanity of the witness his competency depends upon the extent of the insanity. An idiot can under no circumstances be a competent witness; but a lunatic may be competent during a lucid interval,[2] and it may be stated generally that a witness, otherwise competent, is not rendered incompetent by insanity or unsoundness of mind if he has sufficient understanding to apprehend the obligation of an oath and is capable of giving a correct account of what he has seen or heard in reference to the question at issue.[3] In the absence of a statute fixing the time at which an infant shall be deemed competent or incompetent to testify as a witness, his competency depends upon his intelligence, understanding and capacity or ability to comprehend the nature and effect of an oath.[4] Few, if any, of the statutes have attempted to fix the age at which the testimony of an infant shall be excluded in all cases, but many of them provide that children under ten

etc., Co. *v.* Muhlbach, 69 Md. 395, S. C. 1 L. R. A. 507, and authorities cited in note; Larsen *v.* Johnson, 78 Wis. 300, S. C. 23 Am. St. R. 404; Estate of McCausland, 52 Cal. 568; Mason *v.* Prendergast, 120 N. Y. 536; Darwin *v.* Keigher, 45 Minn. 64; Moore *v.* Trimmier, 32 S.Car. 511; Eisenlord *v.* Clum, 126 N. Y. 552; Wiseman *v.* Wiseman, 73 Ind. 112; Lamb *v.* Lamb, 105 Ind. 456; Staser *v.* Hogan, 120 Ind. 207; Durham *v.* Shannon, 116 Ind. 403; Walker *v.* Steele, 121 Ind. 436; Witherspoon *v.* Blewett, 47 Miss. 570; Sheibley *v.* Hill, 57 Ga. 232.

[1] See 19 Am. & Eng. Encyc. of Law, 121; note to Johnson *v.* Boice, 40 La. Ann. 273, S. C. 8 Am. St. Rep. 528; note to Birmingham, etc., R'y Co. *v.* Hale, 24 Am. St. Rep. 752; note to Thompson *v.* Ish, 17 Am. St. R. 565; De Farges *v.* Ryland, 24 Am. St. Rep. 659, and note. See, also, as to husband and wife, Labaree *v.* Wood, 54 Vt. 452; Bierly's Estate, 81 Pa. St. 419; Reynolds *v.* Schaffer, 91 Mich. 494; Johnson *v.* Boice, 40 La. Ann. 273; Schnabel *v.* Betts, 23 Fla. 178; Shaw *v.* Schoonover, 130 Ill. 448; Thornton *v.* Gaar, 87 Va. 315; Auchampaugh *v.* Schmidt, 77 Ia. 13; Louisville, etc., Co. *v.* Thompson, 107 Ind. 442.

[2] Evans *v.* Hettich, 7 Wheat. (U. S.) 453, 470; Campbell *v.* State, 23 Ala. 44.

[3] District of Columbia *v.* Armes, 107 U. S. 519, S. C. 2 Sup. Ct. R. 840; Coleman *v.* Commonwealth, 25 Gratt. (Va.) 865; Reg *v.* Hill, 5 Cox Crim. Cas. 259.

[4] McGuff *v.* State, 88 Ala. 147, S. C. 16 Am. St. R. 25; Flanagin *v.* State,

years of age shall be incompetent unless capable of understanding the nature and obligation of an oath, while others provide that children shall be competent—so far as the question of infancy is concerned—unless they are under ten years of age and appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. The difference in the language of these statutes may affect the presumption that should be indulged as to the competency of the infant witness, but if there is any doubt as to his capacity an examination as to mental qualifications and understanding would doubtless be permitted in any case. At common law a party to an action was not permitted to testify[1] and this was the general rule as to all persons interested in the event of the suit even though they were not parties to the record;[2] but the interest, in order to disqualify, was required to be a certain and direct interest of such a character that the record could be used for or against him in another action or that he would gain or lose by the judgment in the cause.[3] Mere interest in the question involved and not in the event of the suit did not render him incompetent.[4] Where the interest of the witness was exactly balanced, that is, where it was such that he would neither gain nor lose by the operation or use of the judgment or record, he was allowed to testify,[5] and so where his interest

25 Ark. 92; Moore *v.* State, 79 Ga. 498; State *v.* Severson, 78 Ia. 653; Hughes *v.* Detroit, etc., R'y Co., 65 Mich. 10; Holst *v.* State, 23 Tex. App. 1, S. C. 59 Am. R. 770; State *v.* Richie, 28 La. Ann. 327; Draper *v.* Draper, 68 Ill. 17.

[1] Bridges *v.* Armour, 5 How. (U. S.) 91; Wooten *v.* Nall, 18 Ga. 609.

[2] 3 Blk. Com. *369; Bean *v.* Pearsall, 12 Ala. 592; Evans *v.* Hettick, 7 Wheat. (U. S.) 453; Gould *v.* James, 6 Cow. (N. Y.) 369; Spears *v.* Burton, 31 Miss. 547; Bliss *v.* Thompson, 4 Mass. 488.

[3] Eaton *v.* Gentle, 1 Chand. (Wis.) 10; Coltart *v.* Laughinghouse, 38 Ala. 190; Linsee *v.* State, 5 Blackf. (Ind.) 601; Ely *v.* Forward, 7 Mass. 25; Baird *v.* Wolfe, 4 McLean, 549; Coghill *v.* Boring, 15 Cal. 213. See, also, Bowers *v.* Schuler (Minn.), 55 N. W. R. 817.

[4] Rollins *v.* Taber, 25 Me. 144; Baker *v.* Corey, 19 Pick. 496; Mull *v.* Martin, 85 N. Car. 406; McMurray's Appeal, 101 Pa. St. 421; Evans *v.* Eaton, 7 Wheat. (U. S.) 356, 423; Rowley *v.* Bigelow, 12 Pick. 307, S. C. 23 Am. Dec. 607.

[5] Cutter *v.* Copeland, 18 Me. 127; Nute *v.* Bryant, 31 Me. 553; Garner *v.* Bridges, 38 Ala. 276; Montague *v.* Mitchell, 28 Ill. 481; Elgin *v.* Hill, 27 Cal. 372; Kingsbury *v.* Buchanan, 11 Ia. 387; Hidell *v.* Dwinell, 89 Ga. 532, S. C. 16 S. E. R. 79.

was against the party calling him.[1] Other rules might also be given, but it would be unprofitable to extend the discussion of this subject, for, as already stated, interest no longer renders a witness incompetent, under the modern statutes, and objections on account of interest now go to the credibility of the witness rather than to his competency.

§ 421. **Notice to witness—Subpœna—Attachment.**—Dr. Wharton says: "A witness in a civil case (the practice being otherwise in criminal) is entitled to have due notice in order to refresh his memory and arrange his business so as to enable him to testify; and hence, if called upon without notice upon his happening to be in the court, he is ordinarily entitled to decline on the ground that he was not served with a subpœna."[2] Without stopping to inquire whether the statement made by the learned author is strictly correct, and risking a departure from a strict logical method, we commend it as worthy of attention for the suggestion it contains, and that is, that the memory of the witness should have time to fully recall the event or occurrence of which he is expected to give testimony. As the witness is the instrument in the hands of the advocate, it is obvious that the better he is fitted for the purpose for which he is to be used the more effective will be the work he will enable the advocate to accomplish. If the advocate does not give timely notice as the law requires, he will be in fault, and can censure only himself if his fault mars his work in court. He should see that a subpœna is duly issued,[3] and it may be necessary in some cases also to prepay or tender fees and traveling expenses of the witness, but this is usually regulated by statute or rule of court. If the witness, after

[1] Nooe *v.* Higdon, 4 Blackf. (Ind.) 184; Le Clair *v.* Peterson, 4 Blackf. 273; Turner *v.* Davis, 1 B. Mon. (Ky.) 151; Pool *v.* Myers, 21 Miss. 466; Darling *v.* March, 22 Me. 184; Stokes *v.* Kane, 5 Ill. 167.

[2] Wharton's Ev. (3d ed.), § 377.

[3] Hammond *v.* Stuart, 1 Str. 510; Barber *v.* Wood, 2 Moo. & R. 172; Woodward *v.* Purdy, 20 Ala. 379; Stumer *v.* Pitchman, 124 Ill. 250, S. C. 15 N. E. R. 757; Educational Ass'n *v.* Hitchcock, 4 Kan. 36; People *v.* Lampson, 70 Cal. 204, S. C. 11 Pac. R. 593; Chalmers *v.* Melville, 1 E. D. Smith (N. Y.), 502.

being duly subpœnaed, fails to attend, the court, upon the application of the party by whom he was subpœnaed, will issue an attachment, under which he may be brought into court and compelled to testify in a proper case.[1] An attachment is generally issued under such circumstances as of course and as a matter of right,[2] but some courts have held that the granting or refusal of an attachment is a matter of discretion and will not be reviewed upon appeal.[3]

§ 422. **Real evidence.**—The instruments of evidence are sometimes real things, as models, machines, apparel, weapons and the like.[4] These are the instruments of "real evidence," and they are very serviceable if the advocate so thoroughly understands their nature and use as to be able to clearly and strongly instruct and inform the jury. But for the fact that we have more than once seen these instruments of evidence turned with telling force against the advocate who brought them into court, we should deem it needless to caution one who employs such instruments to be sure that he thoroughly understands their construction and their use. "Real evidence" is, it is obvious, of the highest probative force when skillfully used, but in the hands of a blunderer it is oftentimes a very dangerous species of evidence. Many of the ablest advocates have given days of study to instruments of real evidence, and

[1] Wilson *v.* State, 57 Ind. 71; Burnham *v.* Morrissey, 14 Gray (Mass.), 226; Stepherd *v.* People, 19 N. Y. 537; Mitchell *v.* Maxwell, 2 Fla. 594; Rapalje's Law of Witnesses, § 302.

[2] Green *v.* State, 17 Fla. 669.

[3] West *v.* State, 1 Wis. 209; State *v.* Archer, 48 Iowa, 310; State *v.* Benjamin, 7 La Ann. 47; People *v.* Comm'rs, 7 Col. 190.

[4] In a late edition of the autobiography of Roger North, a case is referred to in which there appeared in court as part of the "real evidence" several specimens of brandy, and among those present was a barrister, of enormous bulk and much given to drink, named Saunders. "The judges tasted, the jury tasted, and Saunders, seeing the vials moving, took one and set it to his mouth and drank it all off. The court, observing a pause and some merriment at the bar about Mr. Saunders, called to Jeffries (one of the counsel in the case) to go on with his evidence. 'My Lord,' said he, 'we are at a full stop and can go no further.' 'What's the matter? said the chief. Jeffries replied: 'Mr. Saunders has drank up all our evidence.'" In Hale's Pleas

no prudent man will make use of this kind of evidence unless he knows that he can secure good from it without the risk of harm.

of the Crown, § 635, will be found a case strikingly illustrative of the pro- bative value and force of real evidence.

CHAPTER XIII.

QUESTIONS OF LAW AND FACT.

§ 423. Province of court and jury.
424. Mixed questions of law and fact.
425. Conclusions of law.
426. Agency.
427. Alteration of written instruments.
428. Boundary and location.
429. Cause and effect.
430. Confidential and other relations.
431. Construction of written instruments.
432. Construction of unwritten contracts and language.
§ 433. Fraud and good faith.
434. Identity.
435. Intent—Malice.
436. Laws and ordinances.
437. Negligence.
438. Notice and knowledge.
439. Payment.
440. Possession and ownership.
441. Probable cause.
442. Reasonable time.
443. Waiver and abandonment.
444. Miscellaneous questions.

§ 423. **Province of court and jury.**—Questions of law are for the judge and questions of fact are generally for the jury to determine in actions at law,[1] although there are certain preliminary questions of fact which it is the province and duty of the court to decide, such as those relating to the competency of witnesses and the admissibility of evidence.[2] The province of the court is separate and distinct from that of the jury, and if the court wrongfully invades the province of the jury the error is usually fatal.[3] For this reason it is important to know what

[1] Co. Litt., 155, 156; Thomp. Tr., § 1017. The entire subject of the province of court and jury is elaborately treated by Judge Thompson.

[2] Bartlett *v.* Smith, 11 M. & W. 483; Doe *v.* Davies, L. R. 10 Q. B. 315; Brown *v.* State, 71 Ind. 470; City of Ft. Wayne *v.* Coombs, 107 Ind. 75; Chouteau *v.* Searcy, 8 Mo. 733; McEwen *v.* Bigelow, 40 Mich. 215; Dole *v.* Johnson, 50 N. H. 452; Chandler *v.* Von Roeder, 24 How. (U. S.) 224; Jewell *v.* Parr, L. R. 13 C. B. 909; Robinson *v.* Ferry, 11 Conn. 460; Scott *v.* Coxe, 20 Ala. 294; Gorton *v.* Hadsell, 9 Cush. (Mass.) 508; Carrico *v.* McGee, 1 Dana (Ky.), 6; Carter *v.* Bennett, 6 Fla. 214; Flynt *v.* Bodenhamer, 80 N.Car. 205; State *v.* Michael, 37 W. Va. 565, S. C. 16 S. E. R. 803; De France *v.* De France, 34 Pa. St. 385; State *v.* Banister, 35 So. Car. 290, S. C. 14 S. E. R. 678.

[3] Barker *v.* State, 48 Ind. 163; Wes-

are questions of law and what are questions of fact. In order that the case may be properly presented counsel should know in advance of the trial what questions are involved, and should be prepared to present them to the proper tribunal. He should be ready to prove his facts and to sustain his propositions of law by reason and authority. The choice of the mode of trial also frequently depends upon the advocate's decision as to whether his client's case should be presented upon issues of fact or upon issues of law, and the pleadings should be prepared accordingly. As a general rule if the plaintiff's counsel elects to put the case to the court upon the law he should plead all the facts, but if he hopes to go to the jury and trusts largely to inferences he should plead only such facts as are indispensable to his cause of action.

§ 424. **Mixed questions of law and fact.**—There are many cases in which the jury must determine the facts and the court must instruct them as to the law upon such facts,[1] or, where a special verdict is returned, pronounce the law upon the facts found by the jury.[2] In cases of this kind, where the facts are disputed or more than one reasonable inference can be drawn, the question is often called a mixed question of law and fact.[3] But this expression has been criticised, and it is, perhaps, of little value, for, in one sense at least, the ultimate question in

sels *v.* Beeman, 87 Mich. 481, S. C. 49 N. W. R. 483; Thomas *v.* Thomas, 15 B. Mon. (Ky.) 178; Hickey *v.* Ryan, 15 Mo. 62; Chappell *v.* Allen, 38 Mo. 213; Scott *v.* People, 141 Ill. 195, S. C. 30 N. E. R. 329; Curry *v.* Curry, 114 Pa. St. 367; State *v.* Huffman, 16 Ore. 15, S. C. 16 Pac. R. 640; New Jersey Steamboat Co. *v.* New York, 109 N. Y. 621; Sibley *v.* Ratliffe, 50 Ark. 477, S. C. 8 S. W. R. 686.

[1] Marshall *v.* Schricker, 63 Mo. 308; Pittsburgh, C. & St. L. R'y Co. *v.* Spencer, 98 Ind. 186; Rogers *v.* Leyden, 127 Ind. 50; City of Franklin *v.* Harter, 127 Ind. 446.

[2] Toledo & Wabash R'y Co. *v.* Goddard, 25 Ind. 185; Pittsburgh, C. & St. L. R'y Co. *v.* Spencer, 98 Ind. 186; Bannen *v.* Kokomo, etc., Co., 115 Ind. 115; Conner *v.* Citizens' St. R'y Co., 105 Ind. 62.

[3] See Fourth Nat. Bank *v.* Heuschen, 52 Mo. 207, 209; Burke *v.* Adams, 80 Mo. 504, S. C. 50 Am. R. 510; Hurlburt *v.* Wheeler, 40 N. H. 73; Gatling *v.* Newell, 9 Ind. 572, 577; Roth *v.* Buffalo, etc., R. R. Co., 34 N. Y. 548, S. C. 90 Am. Dec. 736; Chicago & Eastern Ill. R. R. Co. *v.* Ostrander, 116 Ind. 259, 264; Toledo & Wabash R'y Co. *v.* Goddard, 25 Ind. 185, 192.

almost every case is a mixed question of law and fact. The jury no more decide the law in such a case than in any other. They may decide the ultimate question in issue, although it involves a matter of law, but in so doing they do not decide the law, for they are bound, at least in civil cases, to take the law as it is given to them by the court.[1]

§ 425. **Conclusions of law.**—It is a well established rule that pleadings should state facts and not mere conclusions of law;[2] and it is also the rule that special verdicts should find the ultimate facts.[3] Mere conclusions of law will add nothing to the force of a special verdict, and will be disregarded by the court in determining the sufficiency of the verdict.[4] For these

[1] St. Louis Nat. Stock Yards *v.* Wiggins Ferry Co., 102 Ill. 514; Smith *v.* Carrington, 4 Cranch (U. S.), 62; Taylor *v.* Hillyer, 3 Blackf. (Ind.) 433; Indianapolis & St. L. R'y Co. *v.* Watson, 114 Ind. 20; Chapman *v.* McCormick, 86 N. Y. 479; State *v.* Wilner, 40 Wis. 304; Sailer *v.* Barnousky, 60 Wis. 169; Coffin *v.* Coffin, 4 Mass. 1; Washington *v.* State, 63 Ala. 135, S. C. 35 Am. R. 8; 1 Greenl. Ev., § 49. Given the law, which constitutes the major premise, and the facts found by the jury, which constitute the minor premise, the conclusion necessarily follows according to the rules of logic, so that the jury, in applying to the facts the law as it is given to them by the court and drawing the conclusion do not determine the law any more than the court determines the facts by applying the law and rendering judgment upon the facts found by the jury in a special verdict.

[2] Green *v.* Palmer, 15 Cal. 411, S. C. 76 Am. Dec. 492, and note; Spahr *v.* Tartt, 23 Ill. App. 420; Smith *v.* McLean, 22 Ill. App. 451; Crane *v.* Larsen, 15 Ore. 345, S. C. 15 Pac. R. 326; Jackson *v.* Farlow, 75 Ind. 118; People *v.* Commissioners, 54 N. Y. 276, 279; Alabama *v.* Burr, 115 U. S. 413, S. C. 6 Sup. Ct. R. 81, 87; Gould on Pleading, 53, 406; Bliss Code Pl., § 210; Pom. Rem. & Remed. Rts., § 530; Maxwell on Code Pl., 106.

[3] Locke *v.* Merchants' Nat. Bank, 66 Ind. 353; Hoosier Stone Co. *v.* McCain, 133 Ind. 231, S. C. 31 N. E. R. 956; Conlan *v.* Grace, 36 Minn. 276; Grand Rapids & I. R. R. Co. *v.* Ellison, 117 Ind. 234, S. C. 20 N. E. R. 135; Hankey *v.* Downey, 3 Ind. App. 325, S. C. 29 N. E. R. 606; Brown *v.* Aurora, 109 Ill. 165; Rogers *v.* Chicago, etc., R. R. Co., 117 Ill. 115; note to Hayes *v.* Mass. Mutual Life. Ins. Co., 1 L. R. A. 303; Raimond *v.* Terrebonne Parish, 132 U. S. 192, S. C. 10 Sup. Ct. R. 57. See, also, Hill *v.* Covell, 1 N. Y. 522; Langley *v.* Warner, 3 N. Y. 327; Graham *v.* Bayne, 18 How. (U. S.) 60; Tyler *v.* Waddingham, 58 Conn. 375, S. C. 8 L. R. A. 657; Smith *v.* Mohn, 87 Cal. 489, S. C. 25 Pac. R. 696.

[4] Dixon *v.* Duke, 85 Ind. 434; Pittsburgh, etc., R'y Co. *v.* Adams, 105 Ind. 151; Chicago, etc., R. R. Co. *v.* Burger, 124 Ind. 275, S. C. 24 N. E. R. 981; Reeves *v.* Grottendick, 131 Ind.

reasons it is important to know what are mere conclusions of law. Upon this subject there is much apparent conflict among the authorities, and no definite rule can be laid down.[1] It would seem, however, that in the main the same test should be applied as in determining what questions are peculiarly within the province of the court as questions of law, and that an allegation or finding of a conclusion in regard to such a question should be treated as a mere conclusion of law. But, as already stated, there seems to be no test or rule that will hold good in all cases. The following have been held to be mere conclusions of law in pleadings: That it was the "duty" of a party to do a certain act;[2] that under a certain statute an estate passed to the heirs at law;[3] that parties were legally constituted as a board of commissioners;[4] that a party was guilty of a "gross breach of trust";[5] that a certain act was "duly" performed;[6] that a guardian "ratified" a conveyance

107, S.C. 30 N. E. R. 889; Indianapolis, P. & C. R'y Co. *v.* Bush, 101 Ind. 582. See, also, Atwood *v.* Welton, 57 Conn. 514, S. C. 18 Atl. R. 322; Ward *v.* Clay, 82 Cal. 502, 511, S. C. 23 Pac. R. 50.

[1] In Hatch *v.* Peet, 23 Barb. (N. Y.) 575, 583, it is said that a conclusion of law is "an allegation which gives no facts, but matters of law only." This definition, however, is of little assistance, for it does not define "matters of law" or "fact," and these terms are as difficult to define as the term "conclusion of law" itself.

[2] Atwood *v.* Welton, 57 Conn. 514, S. C. 18 Atl. R. 322; McCune *v.* Norwich Gas Co., 30 Conn. 521, S. C. 79 Am. Dec. 278; Breeze *v.* Trenton Horse Co., 52 N. J. L. 250, S. C. 19 Atl. R. 204; Newark *v.* Stout, 52 N. J. L. 35, S. C. 18 Atl. R. 943; Clark Co. *v.* Brod, 3 Ind. App. 585, S. C. 29 N. E. R. 430; Baltimore, etc., Railroad *v.* Wilson, 31 Ohio St. 555; City of Buffalo *v.* Holloway, 7 N. Y. 493.

[3] Temple *v.* Brittan (Ky.), 12 S. W. R. 306. See, also, Montgomery *v.* White (Ky.), 11 S. W. R. 10; Quinney *v.* Stockbridge, 33 Wis. 505; Liles *v.* Ratchford, 88 Ala. 397, S. C. 6 So. R. 914. Compare McCarty *v.* Tarr, 83 Ind. 444.

[4] Woodruff *v.* N. Y., etc., R. R. Co., 59 Conn. 63, S. C. 20 Atl. R. 17. See, also, Spaulding *v.* Wesson, 84 Cal. 141. So, generally, where the terms "lawful" or "unlawful," or the like, are used without stating the facts. Tompkins *v.* Augusta, etc., R.R. Co., 33 So. Car. 216, 11 S. E. R. 692; Sac Co. *v.* Hobbs, 72 Ia. 69, S. C. 33 N. W. R. 368; Hain *v.* North West Gravel Road Co., 41 Ind. 196; Webb *v.* Bidwell, 15 Minn. 479; Bowers *v.* Smith, 111 Mo. 45, 20 S. W. R. 101; People *v.* Supervisors, 27 Cal. 655; People *v.* Commissioners, 11 How. Pr. (N. Y.) 89; People *v.* Lothrop, 3 Col. 428. But compare People *v.* Clayton, 4 Utah, 421, S. C. 11 Pac. R. 206; Plympton *v.* Sapp, 55 Ia. 195.

[5] Whitney *v.* New Haven, 58 Conn. 450, S. C. 20 Atl. R. 666.

[6] Am. Mut. Aid Soc. *v.* Helburn, 85 Ky. 1, S. C. 7 Am. St. R. 571. But see

by his ward;[1] that the law has or has not been complied with;[2] that the petitioner "was detained and imprisoned in violation of the constitution and laws of the United States, and that the district court had no jurisdiction or authority to try and sentence him;"[3] that the plaintiff is "entitled" to recover,[4] and the like.[5] Epithets can not be made to take the place of direct averments of facts, and the use of such words as "wrongfully," "unlawfully," or "fraudulently," will, as a rule at least, add nothing to the force and effect of a pleading,[6] although it is customary to use them in connection with distinct allegations of fact upon which issue can be joined. On the other hand, the following have been held to be allegations of facts: That a notice was not posted in three of the most public places in the town;[7] that an additional assessment was made without notice;[8] that the demand upon which an attachment was based

High *v.* Bank, 95 Cal. 386, S. C. 30 Pac. R. 556; Jewett *v.* Perrette, 127 Ind. 97, S. C. 26 N. E. R. 685.

[1] Funk *v.* Rentchler (Ind.), 33 N. E. R. 364.

[2] Ducie *v.* Ford, 8 Mont. 233, S. C. 19 Pac. R. 414; Gull River Lumber Co. *v.* Keefe, 6 Dak. 160, 41 N. W. R. 743; Trow City Directory Co. *v.* Curtin, 36 Fed. R. 829.

[3] *Ex parte* Cuddy, 131 U. S. 280, S. C. 9 Sup. Ct. R. 703.

[4] Drake *v.* Cockroft, 10 How. Pr. (N. Y.) 377; Sheridan *v.* Jackson, 72 N. Y. 170; Laffey *v.* Chapman, 9 Col. 304.

[5] Daggitt *v.* Mensch, 141 Ill. 395, 31 N. E. R. 153; Central Baptist Church *v.* Manchester, 17 R. I. 492, 23 Atl. R. 30; Reed *v.* Bott, 100 Mo. 62, S. C. 12 S. W. R. 347; Deans *v.* Wilcoxon, 25 Fla. 980, S. C. 7 So. R. 163; Lockwood *v.* Reese, 76 Wis. 404, 45 N. W. R. 313; Farmers' High Line Canal *v.* Southworth, 13 Col. 111, 21 Pac. R. 1028, S. C. 4 L. R. A. 767; Talbott *v.* Padgett, 30 S. Car. 167, S. C. 8 S. E. R. 845; McKinney *v.* Snider, 116 Ind. 160, S. C. 18 N. E. R. 526; Leland *v.* Goodfellow, 84 Mich. 357, S. C. 47 N. W. R. 591.

[6] Clodfelter *v.* Hulett, 72 Ind. 137, 144; Bodkin *v.* Merit, 102 Ind. 293; Lafayette Co. *v.* Neely, 21 Fed. R. 738; Scofield *v.* Whitelegge, 49 N. Y. 259; Connor *v.* Saunders, 81 Tex. 633, S. C. 17 S. W. R. 236; Thompson *v.* State, 3 Ind. App. 371, S. C. 28 N. E. R. 996, 998; Hedges *v.* Dam, 72 Cal. 520, S. C. 14 Pac. R. 133; Clark *v.* Dayton, 6 Neb. 192; Humphreys *v.* Mattoon, 43 Ia. 556; Kraus *v.* Thompson, 30 Minn. 64; Pearce *v.* Watkins, 68 Md. 534. But, in some jurisdictions at least, it is sufficient in ejectment and a few other cases to aver the "wrongful and unlawful" detention or withholding of possession.

[7] McVichie *v.* Knight, 82 Wis. 137, S. C. 51 N. W. R. 1094. See, also, Davis *v.* Lake Shore, etc., R'y Co., 114 Ind. 364, 369.

[8] Board *v.* Gruver, 115 Ind. 224, S. C. 17 N. E. R. 290. Compare Stokes *v.* Geddes, 46 Cal. 17. An allegation that there was "no *proper* or *legal* notice," is a mere conclusion of law. Harris *v.* Ross, 112 Ind. 314.

was "simulated;"[1] that a bond was "wrongfully extorted,"[2] and that a person was of unsound mind.[3] Ownership[4] and negligence[5] are also considered ultimate facts and may usually be averred in general terms. Indebtedness has been held to be a conclusion of law,[6] but there are many cases in Indiana in which an averment of indebtedness, or that money is due and unpaid, has been held sufficient.[7] In special verdicts and findings the following have been held to be mere conclusions of law: That an alleged street was dedicated to the public, where the question depended upon the construction of a writing;[8] that the defendant "took and converted the property in controversy to its own use;"[9] that the plaintiff "had a right to replevy the mill;"[10] and that the defendant is indebted to

[1] Cartwright *v.* Bamberger, 90 Ala. 405, S. C. 8 So. R. 264.

[2] Zimmerman *v.* Kinkle, 108 N. Y. 282, 288, S. C. 15 N. E. R. 407. This, however, would seem to be questionable.

[3] Riggs *v.* Am. Tract Soc., 84 N. Y. 330.

[4] Bliss Code Pl., § 210; Sedgwick & Wait Tr. Tit. to Land, § 435; Stanley *v.* Holliday, 130 Ind. 464, 30 N. E. R. 634; Maus *v.* Bome, 123 Ind. 522, S. C. 24 N. E. R. 345; Arneson *v.* Spawn (S. Dak.), 49 N. W. R. 1066; Pierce *v.* Langdon, 2 Idaho, 878, 28 Pac. R. 401; Commissioners *v.* Young, 18 Kan. 440; Woolley *v.* Newcombe, 58 How. Pr. (N. Y.) 480. But compare Holbrook *v.* Sims, 39 Minn. 122, S. C. 39 N. W. R. 74; Turner *v.* White, 73 Cal. 299, S. C. 14 Pac. R. 794; McCloskey *v.* Barr, 38 Fed. R. 165.

[5] Rolseth *v.* Smith, 38 Minn. 14, S. C. 35 N. W. R. 565; Grinde *v.* Milwaukee & St. Paul R. R. Co., 42 Ia. 376; Gulf, C. & S. F. R. R. Co. *v.* Washington, 49 Fed. R. 347; Cleveland, C., C. & St. L. R'y Co. *v.* Wynant, 100 Ind. 160; Indianapolis, P. & C. R. R. Co. *v.* Keely, 23 Ind. 133; Louisville, N. A. & C. R'y Co. *v.* Cauley, 119 Ind. 142; Garner *v.* Hannibal, etc., R. R. Co., 34 Mo. 235; Oldfield *v.* N. Y., etc., R. R. Co., 14 N. Y. 310; Bliss Code Pl., § 211.

[6] Doyle *v.* Phoenix Ins. Co., 44 Cal. 264; Brown *v.* Buckingham, 11 Abb. Pr. (N. Y.) 387; Haggard *v.* Hays' Admr., 13 B. Mon. (Ky.) 175; Frazier *v.* Williams, 15 Minn. 288; Roberts *v.* Treadwell, 50 Cal. 520; Rolling Stock Co. *v.* Atlantic, etc., Co., 34 Ohio St. 450, 467; Power *v.* Gum, 6 Mont. 5; Morton *v.* Coffin, 29 Ia. 235; Maxwell Code Pl., 17.

[7] Mayes *v.* Goldsmith, 58 Ind. 94; Jaqua *v.* Cordesman, etc., Co., 106 Ind. 141; Douthit *v.* Mohr, 116 Ind. 482. Probably because originally contained in a short form authorized by the legislature. See Johnson *v.* Kilgore, 39 Ind. 147.

[8] City of Indianapolis *v.* Kingsbury, 101 Ind. 200, 222.

[9] Louisville, N. A. & C. R'y Co. *v.* Balch, 105 Ind. 93, 100. See, also, Burt *v.* Decker, 64 Ia. 106.

[10] Keller *v.* Boatman, 49 Ind. 104.

the plaintiff.[1] Contrary to the rule in regard to pleading negligence, it has also been held that a finding in general terms that a party was guilty of negligence or that an injury was caused by the carelessness and negligence of the defendant is a mere conclusion and is insufficient in the absence of facts from which the court can deduce negligence as matter of law.[2] So, a general finding of ownership of personal property has been held to be a mere conclusion which could not prevail over findings of specific facts.[3] But whether a partnership existed between two defendants was held by the Supreme Court of Illinois in a recent case, to be a question of fact, and the court re-

[1] Kennedy *v.* Derrickson, 5 Wash. 289, S. C. 31 Pac. R. 766.

[2] Indianapolis, P. & C. R'y Co. *v.* Bush, 101 Ind. 582; Chicago, St. L. & P. R'y Co. *v.* Burger, 124 Ind. 275, 279, and cases there cited; Pittsburgh, etc., R. R. Co. *v.* Evans, 53 Pa. St. 250; Toledo, etc., R'y Co. *v.* Goddard, 25 Ind. 185; Evansville & T. H. R. R. Co. *v.* Taft, 2 Ind. App. Ct. R. 237, 243; Pittsburgh, C. & St. L. R. R. Co. *v.* Spencer, 98 Ind. 186. In the last case just cited it is said: "The jury have nothing at all to do with the law in cases where they return a special verdict, but they must state the facts so fully that the court can, in a case like this, declare that the law is, that such facts constitute actionable negligence. It is not sufficient to state facts not in themselves constituting negligence, and then by an epithet or conclusion of law characterize them as negligent, but the facts must be so stated as to afford the court grounds for adjudging that the law is that they do constitute negligence. * * * * Conclusions of law in a special verdict are without force, and a general statement that an act was negligently done is but a conclusion of law. The facts showing how the act was done are essential, for without them the court can not ascertain or pronounce the law. All the authorities agree that the law is exclusively for the court in cases where special verdicts are returned, but if it be held that a general statement of negligence is good, then nothing at all is left to the court, for the jury have determined both the law and the facts. To allow this would be to permit the jury to usurp the functions of the court and decide the whole case. * * * Where a general verdict is sought, the court instructs the jury as to the law of negligence, and thus pronounces the law of the case; but in cases where a special verdict is asked, the law is pronounced, not in instructions to the jury, but upon the facts stated by the jury. If the jury for themselves state the law, then the court is a mere passive spectator, at most a mere moderator. In general verdicts the law enters as a factor, because the jury are required to decide the case according to the law and the evidence; but in special verdicts they simply state the facts. It is clear that unless all the material facts are stated in the special verdict, the court can not declare the law, and the result is that the law is not declared at all, or is declared by the jury."

[3] Dixon *v.* Duke, 85 Ind. 434, 441.

fused to review a finding to that effect on the ground that, under the statute of that State, they were not at liberty to review the facts.[1]

§ 426. Agency.—The existence and extent of an alleged agency are questions of fact for the jury to determine from the evidence[2] where the facts are disputed, although it is certainly proper for the court to determine and instruct the jury what is necessary in law to constitute an agent. Whether the agency is proved or not is a question for the jury where the facts are in dispute,[3] but where there is no dispute as to the facts, the court may determine whether or not an agency exists.[4] The question as to whether or not an act is within the authority of the person performing it for another is for the jury to determine from the evidence,[5] where the facts are in dispute; but where the facts are undisputed[6] or the authority is conferred by a writing[7] the scope of such authority is generally a question of

[1] Field *v.* Crawford, 34 N. E. R. 481.

[2] Buist *v.* Guice (Ala.), 11 So. R. 280; Patten *v.* Pancoast, 109 N. Y. 625; Schoelkop *v.* Leonard, 8 Colo. 159; Robinson *v.* Walton, 58 Mo. 380; O'Connor *v.* Le Roux, 78 Mich. 48, S. C. 43 N. W. R. 1084; Brown *v.* Thomson, 31 So. Car. 436, S. C. 10 S. E. R. 95; Germania Fire Ins. Co. *v.* Klewer, 129 Ill. 599, S. C. 22 N. E. R. 489; Black River Lumber Co. *v.* Warner, 93 Mo. 374, S. C. 6 S. W. R. 210.

[3] Mechanics Bank *v.* Nat. Bank, 36 Md. 5; Whitman *v.* Bolling, 47 Ga. 125; Nichols *v.* Hail, 4 Neb. 210; Lamb *v.* Irwin, 69 Pa. St. 436; Bradstreet Co. *v.* Gill, 72 Tex. 115, 9 S. W. R. 753, S. C. 2 L. R. A. 405.

[4] South Bend Toy Co. *v.* Dakota, etc., Co. (S. Dak.), 52 N. W. R. 866.

[5] Loucheim *v.* Davies, 148 Pa. 499, S. C. 24 Atl. R. 72; Luckie *v.* Johnson, 89 Ga. 321, S. C. 15 S. E. R. 459; Moore *v.* Murrell, 56 Ark. 375, S. C. 19 S. W. R. 973; McClung's Ex'rs *v.* Spottswood, 19 Ala. 165, 170; Bickford *v.* Menier, 36 Hun (N. Y.), 446; Gilpatrick *v.* Biddeford, 51 Me. 182; Thayer *v.* Boston, 19 Pick. (Mass.) 511; Wood *v.* Chicago, etc., R. R. Co., 59 Iowa, 196; Hoover *v.* Tibbits, 13 Wis. 79; Van Vranken *v.* Union News Co., 78 Mich. 217, S. C. 44 N. W. R. 337; Missouri Pac. R. R. Co. *v.* Carpenter, 44 Kan. 257, S. C. 24 Pac. R. 462.

[6] Mobile, etc., R. R. Co. *v.* Thomas, 42 Ala. 672; Ludwig *v.* Gorsuch, 154 Pa. St. 413, S. C. 26 Atl. R. 434.

[7] Nofsinger *v.* Ring, 4 Mo. App. 576; Loudon Sav. Fund Soc. *v.* Hagerstown Savings Bank, 36 Pa. St. 498, 502. So, where the question of the scope of an officer's duty or employment is to be determined by the construction of a statute or ordinance it is a question of law for the court. Denver *v.* Dean, 10 Colo. 375, S. C. 16 Pac. R. 30; Geiser *v.* Northampton Co. (Pa.), 11 Atl. R. 507.

law for the court. So, where the ordinary duties of the agent are so well and generally understood that the court will take judicial notice of them, as in case of a bank cashier, the extent of his general authority is a question of law for the court.[1] Ratification of the unauthorized acts of an agent is generally a question of fact for the jury,[2] but where the acts relied on to show ratification are undisputed and unequivocal, the question may become one of law for the court.[3]

§ 427. **Alteration of written instruments.**—Where there is a dispute as to whether an alteration has been made in a written instrument, the question is one of fact for the jury to determine, and so also are the questions as to when and by whom it was made.[4] It has been held, however, that where there are no suspicious circumstances on the face of the instrument the law will presume that the alteration was made before or at the time of the execution of the instrument.[5] The question as to the authority to make alterations or fill blanks is also one of fact for the jury.[6] But the materiality of the alteration is a question of law for the court.[7]

[1] Farmers' Bank *v.* Troy City Bank, 1 Doug. (Mich.) 457; Peninsular Bank *v.* Hanmer, 14 Mich. 208. See, also, United States *v.* City Bank, 21 How. (U. S.) 356, 364; United States *v.* Badeau, 31 Fed. R. 697.

[2] Fisher *v.* Stevens, 16 Ill. 397; Middleton *v.* Kansas City, etc., R. R. Co., 62 Mo. 579; Iron Mountain Bank *v.* Murdock, 62 Mo. 70, 77; Hurtons *v.* Townes, 6 Leigh (Va.), 47; Van Vranken *v.* Union News Co., 78 Mich. 217, S. C. 44 N. W. R. 337.

[3] Crooker *v.* Appleton, 25 Me. 131; Bryant *v.* Moore, 26 Me. 84.

[4] Belfast Nat. Bank *v.* Harriman, 68 Me. 522; Stahl *v.* Berger, 10 Serg. & R. (Pa.) 170, S. C. 13 Am. Dec. 666; Stephens *v.* Graham, 7 Serg. & R. 505, S. C. 10 Am. Dec. 485; Paramore *v.* Lindsey, 63 Mo. 63; Crabtree *v.* Clark, 20 Me. 337; Haynes *v.* Haynes, 33 Ohio St. 598; Ramsey *v.* McCue, 21 Gratt. (Va.) 349; Palmer *v.* Largent, 5 Neb. 223, S. C. 25 Am. R. 479; Rogers *v.* Vosburgh, 87 N. Y. 228; Jones *v.* Alley, 4 Greene (Ia.), 181; Huston *v.* Plato, 3 Colo. 402; Miller *v.* Stark, 148 Pa. St. 164, S. C. 23 Atl. R. 1058.

[5] Holton *v.* Kemp, 81 Mo. 661; Matthews *v.* Coalter, 9 Mo. 705; Bailey *v.* Taylor, 11 Conn. 531; Neil *v.* Case, 25 Kan. 510, S. C. 37 Am. R. 259; Cox *v.* Palmer, 1 McCrary (U. S.), 431; Stoner *v.* Ellis, 6 Ind. 152. But there is an apparent conflict of authority upon this question, due in some measure to the different circumstances of each particular case, and the rule is stricter in regard to negotiable paper than in other cases. The different views are stated and the authorities collected in 1 Am. & Eng. Encyc. of Law, 512, *et seq.*

[6] State *v.* Dean, 40 Mo. 465; Awde *v.* Dixon, 6 Exch. 869.

[7] Wood *v.* Steele, 6 Wall. (U. S.) 80:

§ 428. **Boundary and location.**—It is ordinarily a question of fact as to whether a particular locality is within the limits of a city,[1] and this rule was applied in a case where the plaintiff sought to recover taxes paid by him upon land which he mistakenly supposed was within the city limits. It was held that the mistake was one of fact and not of law.[2] So, the limits of a place, not a public corporation, which is merely described by name, can only be determined by the jury from the evidence.[3] It is for the court to determine the boundaries of a State or county fixed by law,[4] but the application of evidence in ascertaining and settling the boundary is for the jury, under proper instructions.[5] So, generally, while it is the duty of the court to construe a deed or other writing, it is for the jury to apply it, as construed by the court, to the subject-matter, and thus determine whether or not the land or place in dispute is that described in the instrument.[6]

§ 429. **Cause and effect.**—Where the evidence is conflicting as to whether or not one act, condition or thing is the cause of another, the question is one of fact for the jury.[7] So, even

Overton *v.* Matthews, 35 Ark. 146; State *v.* Dean, 40 Mo. 464; Hunt *v.* Adams, 6 Mass. 519; Miller *v.* Gilleland, 19 Pa. St. 119.

[1] Grusenmeyer *v.* City of Logansport, 76 Ind. 549; City of Indianapolis *v.* McAvoy, 86 Ind. 587; Hecker *v.* Sterling, 36 Pa. St. 423, 428.

[2] City of Indianapolis *v.* McAvoy, 86 Ind. 587.

[3] Blanding *v.* Sargent, 33 N. H. 239.

[4] Johns *v.* Davidson, 16 Pa. St. 512; United States *v.* Jackalow, 1 Black (U. S.), 484. See, also, Kime *v.* Polen (Pa.), 8 Atl. R. 783.

[5] United States *v.* Jackalow, 1 Black (U. S.), 484, 487. See, also, Pinkerton *v.* Ledoux, 129 U. S. 346.

[6] Opdyke *v.* Stephens, 28 N. J. L. 83, 90; Greely *v.* Weaver (Me.), 13 Atl. R. 575; Abbott *v.* Abbott, 51 Me. 575; Robinson *v.* White, 42 Me. 209; St. Louis *v.* Meyer, 13 Mo. App. 367, 382; Ott *v.* Soulard, 9 Mo. 581; Tasker *v.* Cilley, 59 N. H. 575; Herpel *v.* Malone, 56 Mich. 199; Wilmarth *v.* Woodcock, 66 Mich. 331, 33 N. W. R. 400; Brown *v.* Willey, 42 Pa. St. 205; Kaiser *v.* Beemer (Pa.), 13 Atl. R. 909; Williston *v.* Morse, 10 Metc. (Mass.) 17; Claremont *v.* Carlton, 2 N. H. 369; White *v.* Hermann, 51 Ill. 243; Ferris *v.* Coover, 10 Cal. 589; White *v.* Burnley, 20 How. (U. S.) 235; Ayers *v.* Watson, 113 U. S. 594; Hawkins *v.* Nye, 59 Texas, 97; Murray *v.* Spencer, 88 N. Car. 357. "What are the boundaries is a matter of law, but where they are is a matter of fact." White *v.* Spreckels, 75 Cal. 610, S. C. 17 Pac. R. 715; Redmond *v.* Stepp, 100 N. Car. 212, S. C. 6 S. E. R. 727.

[7] Carr *v.* Schafer, 15 Colo. 48, S. C. 24 Pac. R. 873; Schlacker *v.* Ashland

where the facts are undisputed, if more than one reasonable inference can be drawn.[1] But where only one reasonable inference can be drawn from the undisputed facts, even if the question is one of proximate cause, the court may determine it as matter of law.[2] In accordance with the general rule that the question should be left to the jury it has been held that the question as to whether a fall was the cause of a certain physical condition was properly left to the jury;[3] that whether a wife was so treated by her husband as to seriously injure her health and endanger her reason is a question of fact for the jury;[4] and that whether excessive speed,[5] intoxicating liquor,[6] the absence of a guard or fence,[7] or the like,[8] was the proximate cause of a person's death or injury is also a question of fact for the jury.

Iron Min. Co., 89 Mich. 253, S. C. 50 N. W. R. 839; Chicago, St. L. & P. R. R. Co. *v.* Fenn, 3 Ind. App. 250, S. C. 29 N. E. R. 790; Hartvig *v.* N. P. Lumber Co., 19 Ore. 522, S. C. 25 Pac. R. 358; Gram *v.* Northern Pacific R.R.Co., 1 N. Dak. 252, S. C. 46 N. W. Rep. 972; Adams *v.* Missouri Pacific R. R. Co. 100 Mo. 555, S. C. 13 S. W. R. 509; Giger *v.* Chicago & N. W. R. R. Co., 80 Ia. 492, 45 N. W. R. 906; Moakler *v.* Willamette, etc., R. R. Co., 18 Ore. 189, S. C. 22 Pac. R. 948; Estill *v.* New York, etc., R. R. Co., 41 Fed. R. 849; Northwestern Life Ins. Co. *v.* Muskegon Bank, 122 U. S. 501; U. S. Mut. Acc. Ass'n *v.* Barry, 131 U. S. 100.

[1] See *post*, § 437.

[2] Henry *v.* St. Louis, etc., R. R. Co., 76 Mo. 288, 293; West Mahanoy Twp. *v.* Watson, 112 Pa. St. 574, S. C. 3 Atl. R. 866; Holman *v.* Chicago, etc., R. R. Co., 62 Mo. 562; Pike *v.* Grand Trunk, etc., R. R. Co., 39 Fed. R. 255; Bunting *v.* Hogsett, 139 Pa. St. 363, S. C. 12 L. R. A. 268; Trapnell *v.* Red Oak Junction, 76 Iowa, 744, S. C. 39 N. W. R. 884.

[3] Keane *v.* Waterford, 130 N. Y. 188, S. C. 29 N. E. R. 130.

[4] Robinson *v.* Robinson (N. H.), 23 Atl. R. 362, S. C. 15 L. R. A. 121; Jones *v.* Jones, 62 N. H. 463.

[5] Tobin *v.* Missouri Pacific R. R. Co. (Mo.), 18 S. W. R. 996; Louisville, N. O. & T. R. R. Co. *v.* Caster (Miss.), 5 So. R. 388.

[6] Davies *v.* McKnight, 146 Pa. St. 610, S. C. 23 Atl. R. 320.

[7] Ewing *v.* North Versailles Tp., 146 Pa. St. 309, S. C. 23 Atl. R. 338; Malloy *v.* Walker Tp., 77 Mich. 448, S. C. 6 L. R. A. 695; Alexander *v.* Chicago, etc.. R. R. Co., 41 Minn. 515, S. C. 43 N. W. R. 481.

[8] Patten *v.* Chicago, etc., R. R. Co., 32 Wis. 524; Pielke *v.* Chicago, etc., R. R. Co., 5 Dak. 444, S. C. 41 N. W. R. 669; Saxton *v.* Bacon, 31 Vt. 540; Scott *v.* Hunter, 46 Pa. St. 192; Willey *v.* Belfast, 61 Me. 569; Stark *v.* Lancaster, 57 N. H. 88; Milwaukee, etc., R. R. Co. *v.* Kellogg, 94 U. S. 469; Sheridan *v.* Brooklyn City, etc., R. R. Co., 36 N. Y. 39; Chicago, etc., R. R. Co. *v.* Pennell, 110 Ill. 435; Kreuziger *v.* Chicago, etc., R. R. Co., 73 Wis. 158; Fairbanks *v.* Kerr, 70 Pa. St. 86, S. C. 10 Am. R. 664; Denver, T. & G. R. R. Co. *v.* Robbins, 2 Colo. Ct. of

§ 430. **Confidential and other relations.**—The question as to whether confidential relations existed between the parties is usually one of fact for the jury,[1] although there are some cases in which the question must be one of law for the court, as, for instance, where the relation of trustee and *cestui que trust*, guardian and ward, or attorney and client exists. Whether the family relation or that of master and servant existed between a niece and her aunt is a question for the jury to determine, under proper instructions, in a suit by the niece against the estate of her aunt, with whom she lived and for whom she cared without any express contract for compensation.[2] And this is the general rule where the facts are disputed and the question is as to whether the relation of master and servant exists.[3] So when the question as to whether a partnership exists is disputed and is a matter of doubt dependent upon conflicting evidence or inferences to be drawn from all the evidence, it is one of fact or mixed law and fact for the jury.[4] Where the facts are un-

App. 313, S. C. 30 Pac. R. 261; Louisville, N. A. & C. R'y Co. *v.* Nitsche, 126 Ind. 229, S. C. 9 L. R. A. 750; Hayes *v.* Michigan Central R. R. Co., 111 U. S. 228.

[1] Chandler *v.* Jost (Ala.), 11 So. R. 636, citing Eastis *v.* Montgomery, 93 Ala. 293, S. C. 9 So. R. 311; Snider *v.* Burks, 84 Ala. 53, S. C. 4 So. R. 225. In the first case cited in this note, the court said of friendly relations existing between a beneficiary under a will and the testator, and the condition of the testator: "We are not to be understood as indicating that all these together would have constituted such a confidential relationship. That is a question of fact for the jury."

[2] James *v.* Gillen, 3 Ind. App. 472, S. C. 30 N. E. R. 7, S. C. 34 Cent. L. Jour. 389, and note.

[3] Brophy *v.* Bartlett, 108 N. Y. 632, S. C. 15 N. E. R. 368; State *v.* Hayes, 59 N. H. 450; Northwestern, etc., Packet Co. *v.* McCue, 17 Wall. (U. S.) 508; Kimball *v.* Cushman, 103 Mass. 194. See, also, Dwinelle *v.* New York, etc., R. R. Co., 120 N. Y. 117, S. C. 24 N. E. R. 319, S. C. 8 L. R. A. 224. (Jury to determine whether servant acting in scope of authority.) Hussey *v.* Norfolk, etc., R. R. Co., 98 N. Car. 34, S. C. 2 Am. St. R. 312 (same question).

[4] Seabury *v.* Bolles, 51 N. J. L. 103, S. C. 21 Atl. R. 952, S. C. 11 L. R. A. 136. See, also, Fletcher *v.* Pullen, 70 Md. 205, S. C. 16 Atl. R. 887; Hallstead *v.* Coleman, 143 Pa. St. 352, S. C. 22 Atl. R. 977, S. C. 13 L. R. A. 370; McDonald *v.* Matney, 82 Mo. 358; Kahn *v.* Central Smelting Co., 2 Utah, 371; Doggett *v.* Jordan, 2 Fla. 541. But what is necessary to constitute a partnership in law is for the court, and the jury should be instructed upon the point. Dulany *v.* Elford, 22 S. Car. 304; Cumpston *v.* McNair, 1 Wend. (N. Y.) 457. Whether a debt is a firm or an individual debt has been

disputed it is for the court to determine as matter of law whether one servant bears to another the relation of fellow-servant,[1] but in other cases the question is usually one for the jury to determine, under proper instructions.[2] So, it has been held a question for the jury to determine whether one person is the tenant of another,[3] and whether the relation of bailor and bailee exists[4] where the facts are in dispute.

§ 431. **Construction of written instruments.**—The construction or interpretation of a written instrument is generally a question of law for the court.[5] This rule includes not only contracts, deeds, wills and letters but also judicial and other public records.[6] The legal effect of the writing is for the court

held a question for the jury. Warriner *v.* Mitchell, 128 Pa. St. 153, S. C. 18 Atl. R. 337.

[1] Dube *v.* Lewiston, 83 Me. 211, S. C. 22 Atl. R. 112; Yates *v.* McCullough Iron Co., 69 Md. 370, S. C. 16 Atl. R. 280; McGinty *v.* Athol Reservoir Co., 155 Mass. 183, S. C. 29 N. E. R. 510; Quebec Steamship Co. *v.* Merchant, 133 U. S. 375, S. C. 10 Sup. Ct. R. 397; Stone *v.* Penna. R. R. Co., 132 Pa. St. 206, S. C. 19 Atl. R. 67. See, also, Miller *v.* So. Pac. R. R. Co., 20 Ore. 285, S. C. 4 Lewis' Am. R. R. & Corp. Cas., 1, and note.

[2] Chicago, B. & Q. R. R. Co. *v.* Fitzgerald, 40 Ill. App. 476; Lake Erie, etc., R. R. Co. *v.* Middleton, 142 Ill. 550, S. C. 32 N. E. R. 453; Joliet Steel Co. *v.* Shields, 32 Ill. App. 598; Babcock *v.* Old Colony R. R. Co., 150 Mass. 467, S. C. 23 N. E. R. 325; Chicago & A. R. R. Co. *v.* Kelly, 127 Ill. 637, S. C. 21 N. E. R. 203; Baltimore & Ohio R. R. Co. *v.* McKenzie, 81 Va. 71.

[3] Bowe *v.* Hyland, 44 Minn. 88, S. C. 46 N. W. R. 142; State *v.* Hayes, 59 N. H. 450; Neppach *v.* Jordan, 15 Ore. 308, S. C. 14 Pac. R. 353.

[4] Holohan *v.* Mix, 134 Pa. St. 88, S. C. 19 Atl. R. 496.

[5] Davis *v.* Badders, 95 Ala. 348, S. C. 10 So. R. 422; Edwards *v.* Smith, 63 Mo. 119; Willard *v.* A. Siegel Gas Co., 47 Mo. App. 1; Lapeer Ins. Co. *v.* Doyle, 30 Mich. 159; McKenzie *v.* Sykes, 47 Mich. 294; Streeter *v.* Streeter, 43 Ill. 155; Bailey *v.* Ferguson, 39 Ill. App. 91; Drew *v.* Towle, 30 N. H. 531; Williams *v.* Waters, 36 Ga. 454; Dumn *v.* Rothermel, 112 Pa. St. 272; Roth *v.* Miller, 15 Serg. & R. (Pa.) 100; Shepherd *v.* White, 11 Tex. 346; Thomas *v.* Thomas, 15 B. Mon. (Ky.) 178; Nash *v.* Drisco, 51 Me. 417; Rogers *v.* Colt, 21 N. J. L. 704; Eddy *v.* Chace, 140 Mass. 471; Higgins *v.* McCrea, 116 U. S. 671; Grady *v.* Cassidy, 104 N. Y. 147; Warner *v.* Thompson, 35 Kan. 27; Friend *v.* Friend, 64 Md. 321; Burke *v.* Lee, 76 Va. 386; Union Bank *v.* Heyward, 15 S. Car. 296; Bedford *v.* Flowers, 11 Humph. (Tenn.) 242; Van Eman *v.* Stanchfield, 8 Minn. 518; Dixon *v.* Duke, 85 Ind. 434; Spence *v.* Board, 117 Ind. 573; Russell *v.* Merrifield, 131 Ind. 148, S. C. 30 N. E. Rep. 957; Reagan *v.* Sheets, 130 Ind. 185, S. C. 29 N. E. R. 1065; Neilson *v.* Harford, 8 Mees. & W. 823; Parker *v.* Ibbetson, 4 C. B. (N. S.) 345.

[6] Wyatt *v.* Steele, 26 Ala. 639; Shook

to determine.[1] So, the question as to its validity upon its face, as whether it appears to be duly executed or the like, is a question of law for the court.[2] Where the terms of a writing are ambiguous and uncertain parol evidence of the circumstances, situation and acts of the parties may sometimes be resorted to in order to discover the true intention and the interpretation given to it by the parties themselves. In such a case the question usually becomes one of fact for the jury to determine.[3] And, generally, where it is necessary to resort to oral evidence of custom, usage, or other collateral facts and circumstances in order to discover the true intention of the parties, the question becomes one of fact for the jury to determine[4] un-

v. Blount, 67 Ala. 301; Sims v. Boynton, 32 Ala. 353; State v. Anderson, 30 La. Ann. 557; Reagan v. Sheets, 130 Ind. 185, S. C. 29 N. E. R. 1065; State v. Robbins (Me.), 13 Atl. R. 584; Harvey v. Cummings, 68 Texas, 599, S. C. 5 S. W. R. 513.

[1] Keith v. Sands, etc., Co., 88 Mich. 172, S. C. 50 N. W. R. 133; Dumn v. Rothermel, 112 Pa. St. 272; Luckhart v. Ogden, 30 Cal. 547; Levy v. Gadsby, 3 Cranch (U. S.), 180; Arctic Fire Ins. Co. v. Austin, 69 N. Y. 470, S. C. 25 Am. R. 221; Cottrell v. Cottrell, 126 Ind. 181, S. C. 25 N. E. R. 905; Bell v. Keepers, 37 Kan. 64; Solary v. Stultz, 22 Fla. 263; Robbins v. Spencer, 121 Ind. 594; Hughes v. Dundee Mortgage, etc., Co., 140 U. S. 98, S. C. 11 Sup. Ct. R. 727.

[2] Bullock v. Narrott, 49 Ill. 62; Roe v. Taylor, 45 Ill. 485; Riley v. Riley, 36 Ala. 496; Garner v. Lansford, 12 Smed. & M. (Miss.) 558; Snyder v. Kurtz, 61 Ia. 593; Pierce v. Randolph, 12 Tex. 290 (question of invalidity against public policy).

[3] Reissner v. Oxley, 80 Ind. 580; Brown v. McGrau, 14 Pet. (U. S.) 493; Weil v. Schwartz, 21 Mo. App. 372, 380; Darling v. Dodge, 36 Me. 370; Wilcoxen v. Bowles, 1 La. Ann. 230; Williamson v. McClure, 37 Pa. St. 402; Watson v. Blaine, 12 Serg. & R. (Pa.) 131; School Dist. v. Lynch, 33 Conn. 380.

[4] Blair v. Lynch, 105 N. Y. 636; Pitney v. Glens Falls Ins. Co., 65 N. Y. 6; First Nat. Bank v. Dana, 79 N. Y. 108; Home B. & L. Ass'n v. Kilpatrick, 140 Pa. St. 405, S. C. 21 Atl. R. 397; Edwards v. Goldsmith, 16 Pa. St. 43; Foster v. Berg, 104 Pa. St. 324; Vernor v. Henry, 3 Watts (Pa.), 385; Hopson v. Brunwankel, 24 Tex. 607; Haney v. Caldwell, 59 Ark. 156; Etting v. Bank, 11 Wheat. (U. S.) 59; Barreda v. Silsbee, 21 How. (U. S.) 146; Bell v. Woodward, 46 N. H. 315; Philibert v. Burch, 4 Mo. App. 470; McNichol v. Pacific Express Co., 12 Mo. App. 407; Prather v. Ross, 17 Ind. 495; Holman v. Crane, 16 Ala. 570, 580; Bedard v. Bonville, 57 Wis. 270; Bradford v. S. Car. R. R. Co., 7 Rich. L. 201; Coupland v. Housatonic R. R. Co., 61 Conn. 531, S. C. 15 L. R. A. 534, S. C. 23 Atl. R. 870; Smith v. Worn, 93 Cal. 206, S. C. 28 Pac. R. 944; Dahlstrom v. St. Louis, etc., R. R. Co. (Mo.), 18 S. W. R. 919. Compare Begg v. Forbes, 30 Eng. L. & Eq. 508; Milbank v. Dennistoun, 21 N. Y. 386; McAvoy v. Long, 13 Ill. 147, 150; Louisville, etc., R. R. Co. v. McKenna, 13 Lea (Tenn.), 280, 288.

der proper instructions from the court.[1] So it has been held that whether a term used in a tariff act has a trade meaning, and whether a certain article is included therein, should be left to the jury to determine.[2] In some cases a modified view is taken, and it is held that, although the meaning of a doubtful term may be left to the jury, the final interpretation of the instrument is for the court, giving to the ambiguous term the meaning declared by the jury.[3] Where a writing is illegible it would seem, upon principle, to be within the province of the jury to decipher it and determine the words or figures intended to be used as a matter of fact, and to this effect is the weight of authority,[4] although there are several decisions to the contrary.[5] There is a similar conflict of authority as to whether the court or jury should determine the intention and meaning where blanks have been left unfilled in a written instrument, but it is generally held to be a question for the jury.[6] So, "where the effect of a written instrument collaterally introduced in evidence depends not merely on its construction and meaning, but also upon extrinsic facts and circumstances,

[1] Williams *v.* Woods, 16 Md. 220; Deutmann *v.* Kilpatrick, 46 Mo. App. 624; Smith *v.* Faulkner, 12 Gray (Mass.), 251; Simpson *v.* Pegram, 112 N. Car. 541, S. C. 17 S. E. R. 430; Kenyon *v.* Knights Templars', etc., Ass'n, 122 N.Y. 247; Eaton *v.* Smith, 20 Pick. (Mass.) 150; Houghton *v.* Watertown Fire Ins. Co., 131 Mass. 300; Fowle *v.* Bigelow, 10 Mass. 379; Curtis *v.* Martz, 14 Mich. 506; Taylor *v.* McNutt, 58 Tex. 71; Farwell *v.* Tillson, 76 Me. 227. In other words, as some of these authorities say, the entire matter may be considered as a mixed question of law and fact.

[2] Baumgarten *v.* Magone, 50 Fed. R. 69.

[3] Edwards *v.* Smith, 63 Mo. 119, 127; Edelman *v.* Yeakel, 27 Pa. St. 26; Neilson *v.* Harford, 8 Mees. & W. 806, 823; Hutchinson *v.* Bowker, 5 Mees. & W. 535. See, also, Morrell *v.* Frith, 3 M. & W. 402; March *v.* Allabough, 103 Pa. St. 335; Adams, etc., Co. *v.* Cook, 16 Bradw. (Ill.) 161.

[4] Armstrong *v.* Burrows, 6 Watts (Pa.), 266; Cabarga *v.* Seeger, 17 Pa. St. 514; Paine *v.* Ringold, 43 Mich. 341; Fenderson *v.* Owen, 54 Me. 372; Burnham *v.* Allen, 1 Gray (Mass.), 496; Arthur *v.* Roberts, 60 Barb. (N. Y.) 580; Jefferson Co. *v.* Savory, 2 Greene (Ia.), 238; Norman *v.* Morrell, 4 Ves. 769; Jones on Constr. of Com. & Trade Contracts, § 17.

[5] Riley *v.* Dickens, 19 Ill. 29; Commonwealth *v.* Riggs, 14 Gray (Mass.), 376; Rex *v.* Hucks, 1 Stark, N. P., 424. In Partridge *v.* Patterson, 6 Ia. 514, it was held discretionary with the court to submit the question to the jury.

[6] Conner *v.* Routh, 7 How. (Miss.) 176; Boyd *v.* Brotherson, 10 Wend.

the inferences to be drawn from it are inferences of fact and not of law.''[1]

§ 432. **Construction of unwritten contracts and language.** —Questions as to what words were used by the parties, their intention and the meaning of the words as matters of fact are for the jury to determine,[2] but when these facts are ascertained their legal effect is for the court.[3] This rule applies in cases of slander as well as in cases of contract, and if the words used are equivocal and susceptible of more than one construction their meaning as used and understood is a question of fact for the jury.[4] In such a case the court should instruct the jury as to what is necessary to constitute slander, and then leave it

(N. Y.) 93; Dobson *v.* Finley, 8 Jones, L. (N. Car.), 495; Bell *v.* Woodward, 46 N. H. 315. *Contra* Coolbroth *v.* Purinton, 29 Me. 469; Kincannon *v.* Carroll, 9 Yerg. (Tenn.) 11; Langdon *v.* Goole, 3 Lev. 21.

[1] Per Clifford, J., in West *v.* Smith, 101 U. S. 263. To the same effect are Reynolds *v.* Richards, 14 Pa. St. 205; Barreda *v.* Silsbee, 21 How. (U. S.) 146, 167; Primm *v.* Haren, 27 Mo. 205; Conover *v.* Inhabitants of Middletown, 42 N. J. L. 382.

[2] Copeland *v.* Hall, 29 Me. 93; Kuns *v.* Young, 34 Pa. St. 60; Broward *v.* Doggett, 2 Fla. 49; Dodge *v.* Janvrin, 59 N. H. 16; Folsom *v.* Plumer, 43 N. H. 469; Wagner *v.* Egleston, 49 Mich. 218; Mastin *v.* Pac. R. R. Co., 83 Mo. 634; Watson *v.* Stromberg, 46 Mo. App. 630; Keesey *v.* Old, 82 Tex. 22, S. C. 17 S. W. R. 928; Burritt *v.* Villenuve, 92 Mich. 282, S. C. 52 N.W. R. 614. See, also, Adams *v.* Davis, 16 Ala. 748; Cunningham *v.* Cambridge Sav. Bank, 138 Mass. 480; St. Louis Nat. Stock Yards *v.* Wiggins, 102 Ill. 514; Deming *v.* Foster, 42 N. H. 165; Codding *v.* Wood, 112 Pa. St. 371; Brubaker *v.* Okeson, 36 Pa. St. 519. So, where the evidence is conflicting it has been held a question for the jury to determine whether the contract is in writing or parol. Jenness *v.* Berry, 17 N. H. 549; Roberts *v.* Bonaparte, 73 Md. 191, S. C. 10 L. R. A. 689; McLaughlin *v.* Wheeler (S. Dak.), 47 N. W. R. 816; Collins *v.* Houston, 138 Pa. St. 481.

[3] Globe Works *v.* Wright, 106 Mass. 207; Estes *v.* Boothe, 20 Ark. 583; Warnick *v.* Grosholz, 3 Grant Cas. (Pa.) 234; Islay *v.* Stewart, 4 Dev. & B. (N. Car.) 160; Smalley *v.* Hendrickson, 29 N. J. L. 371; Judge *v.* Leclaire, 31 Mo. 127; Diefenback *v.* Stark, 56 Wis. 462; Terry *v.* Shively, 64 Ind. 106.

[4] Hays *v.* Hays, 1 Humph. (Tenn.) 402; Twombly *v.* Monroe, 136 Mass. 464; Thompson *v.* Powning, 15 Nev. 195; Blakeman *v.* Blakeman, 31 Minn. 396; McLaughlin *v.* Bascom, 38 Ia. 660; *Ex parte* Baily, 2 Cow. (N. Y.) 479; Sanderson *v.* Caldwell, 45 N. Y. 398; Van Vactor *v.* Walkup, 46 Cal. 124; Mosier *v.* Stoll, 119 Ind. 244, S. C. 20 N. E. R. 752; Roe *v.* Chitwood, 36 Ark. 210; Haley *v.* State, 63 Ala. 89; Park *v.* Piedmont Ins. Co., 51 Ga. 510; Odgers on Libel and Slander, 95.

to them to determine whether the words charged were used by the defendant and whether the circumstances and the meaning of the words were such as to bring the case within the definition.[1] But where the words are unequivocal and clearly defamatory or actionable *per se* the court should so instruct the jury as matter of law.[2]

§ 433. **Fraud and good faith.**—The question of fraud, at least where it depends upon intent, is usually for the jury under proper instructions from the court.[3] But it is said that where fraud is "self-evident" the court should decide the question without submitting it to the jury,[4] and it is undoubtedly within the province of the court to decide the matter as one of law where the facts are undisputed and but one reasonable in-

[1] State *v.* Goold, 62 Me. 509; Shattuck *v.* Allen, 4 Gray (Mass.), 540; *In re* Noyes' Will, 61 Vt. 14, S. C. 17 Atl. R. 743; Parmiter *v.* Coupland, 6 Mees. & W. 105.

[2] Gottbehuet *v.* Hubachek, 36 Wis. 515; Smith *v.* Stewart, 41 Minn. 7, S. C. 42 N. W. R. 595; Thompson *v.* Grimes, 5 Ind. 385; Waugh *v.* Waugh, 47 Ind. 580; Gabe *v.* McGinnis, 68 Ind. 538; Pugh *v.* McCarty, 44 Ga. 383; Bourreseau *v.* Detroit Evening News, 63 Mich. 425, S. C. 30 N. W. R. 376; Lewis *v.* Chapman, 16 N. Y. 369; Snyder *v.* Andrews, 6 Barb. (N. Y.) 43; Pittock *v.* O'Niell, 63 Pa. St. 253; Haight *v.* Cornell, 15 Conn. 74; Negley *v.* Farpow, 60 Md. 158, S. C. 45 Am. R. 715.

[3] Griel *v.* Lomax, 86 Ala. 132, S. C. 5 So. R. 325; Bulger *v.* Rosa, 119 N. Y. 459; Michelstetter *v.* Weiner, 82 Wis. 298, S. C. 52 N. W. R. 435; Morgan *v.* Hecker, 74 Cal. 540, S. C. 16 Pac. Rep. 317; Weaver *v.* Owens, 16 Ore. 301, S. C. 18 Pac. R. 579; Riley *v.* Melquist, 23 Neb. 474, S. C. 36 N. W. Rep. 657; Weaver *v.* Nugent, 72 Texas, 272, S. C. 10 S. W. Rep. 458; Buckley *v.* Artcher, 21 Barb. (N. Y.) 585; Hanna *v.* Phillips, 1 Grant Cas. (Pa.) 253; Woodruff *v.* Bowles, 104 N. Car. 197, S. C. 10 S. E. R. 482; Renninger *v.* Spatz, 128 Pa. St. 524, S. C. 18 Atl. R. 405; Woolenslagle *v.* Runals, 76 Mich. 545, S. C. 43 N. W. R. 454; Haven *v.* Neal, 43 Minn. 315, S. C. 45 N. W. R. 612; Wolf *v.* Kohr, 133 Pa. St. 13, S. C. 19 Atl. R. 284; Marsh *v.* Cramer, 16 Colo. 331, S. C. 27 Pac. R. 169; Gaines *v.* White (S. Dak.), 47 N. W. Rep. 524; Rosenthal *v.* Vernon, 79 Wis. 245, S. C. 48 N. W. Rep. 485; Dennison *v.* Grove, 52 N. J. L. 144, S. C. 19 Atl. Rep. 186; Jewell *v.* Knight, 123 U. S. 426; Warner *v.* Norton, 20 How. (U. S.) 448; Leasure *v.* Coburn, 57 Ind. 274; Goff *v.* Rogers, 71 Ind. 459; Powell *v.* Stickney, 88 Ind. 310; Phelps *v.* Smith, 116 Ind. 387; Brown *v.* Mitchell, 102 N. Car. 347, S. C. 11 Am. St. R. 748, and note.

[4] Hardy *v.* Simpson, 13 Ired. L. (N. Car.) 132; Williams *v.* Hartshorn, 30 Ala. 211; Bigelow on Fraud, 468. See, also, Sturtevant *v.* Ballard, 9 Johns. (N. Y.) 337; Worseley *v.* De Mattos, 1 Burr. 467, 474.

ference can be drawn from them.[1] The question of good faith, like that of fraud, is also for the jury upon conflicting evidence or inference.[2] Thus, where money was paid by the plaintiff to the defendant, who had a matrimonial bureau and carried on a marriage brokerage business, under an agreement to furnish the plaintiff with a husband, or return the money, it was held in an action to recover the money, that, although the contract was illegal and there was no evidence of undue influence or overpersuasion, the inferences to be drawn from the facts as to the equality of guilt or the parties being *in pari delicto* were for the jury.[3] So, the good faith of an occupying claimant in making improvements is a question of fact for the jury.[4]

§ 434. **Identity.**—The question of identity, like questions in regard to boundaries and location, is ordinarily one of fact for the jury;[5] but it has been held a question for the court, and

[1] Huggins Cracker, etc., Co. *v.* Ellis, 45 Mo. App. 585; Prentiss Tool Co. *v.* Schirmer, 45 N. Y. S. R. 20, S. C. 17 N. Y. Supp. 662; Upson *v.* Raiford, 29 Ala. 188; Gage *v.* Parker, 25 Barb. (N. Y.) 141; Erwin *v.* Voorhees, 26 Barb. 127; Beasley *v.* Bray, 98 N. Car. 266, S. C. 3 So. R. 497; Pettibone *v.* Stevens, 15 Conn. 19, S. C. 38 Am. Dec. 57; Dodd *v.* McCraw, 8 Ark. 83, S. C. 46 Am. Dec. 301.

[2] Maverick *v.* Maury, 79 Texas, 435, S. C. 15 S. W. Rep. 686; Louder *v.* Schluter, 78 Texas, 103, S. C. 14 S. W. R. 205; Parke *v.* Franco-Am. Trading Co., 120 N. Y. 51, S. C. 23 N. E. R. 996; Parker *v.* State, 88 Ala. 4, S. C. 7 So. R. 98; Wright *v.* Lothrop, 149 Mass. 385, S. C. 21 N. E. R. 963; Burroughs *v.* Ploof, 73 Mich. 607, S. C. 41 N. W. Rep. 704 (question as to *bona fides* of holder of note); Roth *v.* Colvin, 32 Vt. 125 (same question); Gall *v.* Gall, 114 N. Y. 109, S. C. 21 N. E. Rep. 106; State *v.* Huff, 76 Iowa, 200, S. C. 40 N. W. Rep. 720; State *v.* Eckler, 106 Mo. 585, S. C. 17 S. W. R. 814; Fisher *v.* Bennehoff, 121 Ill. 426, S. C. 13 N. E. R. 150.

[3] Duval *v.* Wellman, 124 N. Y. 156, S. C. 26 N. E. R. 343.

[4] Merrill *v.* Hilliard, 59 N. H. 481; Johnson *v.* Schumacher, 72 Texas, 334, S. C. 12 S. W. R. 207; Sedgwick & Wait on Tr. of Tit. to Land, § 694.

[5] Identity of persons: Swicard *v.* Hooks, 85 Ga. 580, S. C. 11 S. E. R. 863; People *v.* Fick, 89 Cal. 144, S. C. 26 Pac. R. 759; Begg *v.* Begg, 56 Wis. 534; Prentiss *v.* Blake, 34 Vt. 460; McDuffie *v.* Clark, 39 Hun (N.Y.), 166; Com. *v.* Caponi, 155 Mass. 534, S. C. 30 N. E. R. 82; Durfee *v.* Abbott, 61 Mich. 471, S. C. 28 N. W. R. 521. Identity of property: State *v.* Babb, 76 Mo. 501; Com. *v.* Cunningham, 104 Mass. 545; Weber *v.* Illing, 66 Wis. 79; Scott *v.* Sheakly, 3 Watts (Pa.), 50; Sawyer *v.* Middlesborough Town Co. (Ky.), 17 S. W. R. 444. See, generally, Miller *v.* Marks, 20 Mo. App. 369; State *v.* Chee Gong, 17 Ore. 635, S. C. 21 Pac. R. 882; Brown *v.* McCollum, 76 Iowa, 479, S. C. 41 N. W. R. 197; Link *v.* Page, 72

not for the jury, to determine whether the matters involved in an action are the same as those in issue in a former action within the rule as to a former adjudication.[1] Where an article is used for several purposes and its classification, under the tariff laws, depends upon the preponderance of use, or where such classification depends upon the trade name of the article, and evidence is necessary to determine it, the question is one for the jury.[2] So, where an action at law was brought to recover damages for the infringement of a patent and the evidence was conflicting, it was held that the question as to whether the specifications in the patent and the publication and drawings introduced to show prior use of the same device as a defense described the same thing or differed materially, was one for the jury under proper instructions, and not for the court to determine as matter of law.[3]

§ 435. **Intent—Malice.**—Intent, purpose, or design is a question of fact for the jury,[4] except where, as stated in another section, the court can determine it from the language or terms used in a writing,[5] and except where the law conclusively presumes a certain intent from the doing of a certain act.[6] Thus,

Texas, 592, S. C. 10 S. W. Rep. 699; Com. *v.* Buckley, 147 Mass. 581, S. C. 18 N. E. R. 571; *ante*, §§ 37, 38.

[1] Nickless *v.* Pearson, 126 Ind. 477, S. C. 26 N. E. R. 478; Tutt *v.* Price, 7 Mo. App. 194. But it has also been held that the question should be left to the jury where extrinsic parol evidence is necessary to determine what issues were in fact involved in the prior action. Packet Co. *v.* Sickels, 5 Wall. (U. S.) 580; Tutt *v.* Price, 7 Mo. App. 194.

[2] Robertson *v.* Oelschlaeger, 137 U. S. 436, S. C. 11 Sup. Ct. Rep. 148; Robertson *v.* Solomon, 144 U. S. 603, S. C. 12 Sup. Ct. R. 752.

[3] Keyes *v.* Grant, 118 U. S. 25, S. C. 6 Sup. Ct. Rep. 974. See, also, Battin *v.* Taggert, 17 How. (U. S.) 74, 85.

[4] Coxe *v.* Wolcott, 27 Pa. St. 154; Dumn *v.* Rothermel, 112 Pa. St. 272, 283; Cross *v.* Barnett, 65 Wis. 431; Beedy *v.* Macomber, 47 Me. 451; West *v.* White, 56 Mich. 126; Knight *v.* New England, etc., Co., 2 Cush. (Mass.) 271; Shepherd *v.* Cassiday, 20 Texas, 24; Hine *v.* Bowe, 114 N. Y. 350, S. C. 21 N. E. R. 733; Copas *v.* Anglo-Am. Provision Co. (Mich.), 14 N. W. R. 690; Neisler *v.* Harris, 115 Ind. 560.

[5] See § 431, *ante*. See, also, Beasley *v.* Bray, 98 N. Car. 266.

[6] See 1 Bish. Cr. L. 314; Flinn *v.* State, 24 Ind. 286; Achey *v.* State, 64 Ind. 59; Shover *v.* State, 10 Ark. 259; Com. *v.* Hersey, 2 Allen (Mass.), 173; Com. *v.* Webster, 5 Cush. (Mass.), 295; Reynolds *v.* United States, 98 U. S. 145; People *v.* Petheram, 64 Mich. 252; State v. Lautenschlager, 22 Minn. 514; United States *v.* Harper, 33 Fed. R. 471; State *v.* Smith, 93 N. Car. 516.

the question of the intent with which a person accused of burglary entered the house is for the jury;[1] so is the intent of one charged with conspiracy,[2] obtaining money by false pretenses[3] or the like.[4] The rule is the same in civil actions. Thus, questions of domicile,[5] of the revocation of a will,[6] and of dedication[7] are usually questions of fact, or mixed questions of law and fact to be determined by the jury; and so are questions of intent to abandon a homestead,[8] to evict a

[1] People *v.* Winters, 93 Cal. 277, S. C. 28 Pac. R. 946; People *v.* Griffin, 77 Mich. 585, S. C. 43 N. W. R. 1061.

[2] People *v.* Flack, 125 N. Y. 324, S. C. 11 L. R. A. 807. See, also, Russell *v.* Post, 138 U. S. 425.

[3] People *v.* Baker, 96 N. Y. 340.

[4] See the following criminal cases: Burke *v.* State, 71 Ala. 377; People *v.* Griffin, 77 Mich. 585; Carter *v.* State, 22 Fla. 553; People *v.* Kelly, 113 N. Y. 647; McKenna *v.* People, 81 N. Y. 360; Buckner *v.* Com., 14 Bush. (Ky.) 603; State *v.* Swayze, 30 La. Ann. 1325; Russell *v.* State, 68 Ga. 785; Money *v.* State, 89 Ala. 110.

[5] Pennsylvania *v.* Ravenel, 21 How. (U. S.) 103; Tiller *v.* Abernathy, 37 Mo. 196; State *v.* Palmer, 65 N. H. 9, S. C. 17 Atl. R. 977; Foss *v.* Foss, 58 N. H. 283; Potts *v.* Davenport, 79 Ill. 455; Cochrane *v.* Boston, 4 Allen (Mass.), 177; Lyman *v.* Fiske, 17 Pick. (Mass.) 231; Fulham *v.* Howe, 62 Vt. 386, S. C. 20 Atl. Rep. 101. See, also, Chicago, etc., R. R. Co. *v.* Ohle, 117 U. S. 123.

[6] Lawyer *v.* Smith, 8 Mich. 411; Burns *v.* Burns, 4 Serg. & R. (Pa.) 295. See, also, Law *v.* Law, 83 Ala. 432, S. C. 3 So. R. 752.

[7] Nixon *v.* Town of Biloxi (Miss.), 5 So. R. 621; Eastland *v.* Fogo, 58 Wis. 274; Gardiner *v.* Tisdale, 2 Wis. 153; Harding *v.* Jasper, 14 Cal. 642; People *v.* Reed, 81 Cal. 70; Elgin *v.* Beckwith, 119 Ill. 367, 10 N. E. R. 558; McKey *v.* Hyde Park, 134 U. S. 84; Wood *v.* Hurd, 34 N. J. L. 87; Casey *v.* Tama Co., 75 Iowa, 655, S. C. 37 N. W. R. 138; Elliott on Roads and Streets, 120. "There may be cases where the facts are undisputed and where they admit of but one legal interpretation, or can lead to one conclusion only, and in all such cases the question is purely one of law (citing White *v.* Bradley, 66 Me. 254; State *v.* Schwin, 65 Wis. 207, 26 N. W. R. 568; Kennedy *v.* Mayor, 65 Md. 514), but in general the elements of law and fact are intermingled, and in all such cases the court directs the jury as to the law and commits to their decision the question of the existence of the facts alleged to exist as well as the question of the inferences to be drawn from them." Elliott on Roads and Streets, 121. Where the question depends upon the construction and effect of a statute or a map or other written instrument it is generally a matter for the court to decide as a question of law. Miller *v.* City of Indianapolis, 123 Ind. 196; State *v.* Schwin, 26 N. W. R. 568, S. C. 65 Wis. 207.

[8] Carter Lumber Co. *v.* Clay (Texas), 10 S. W. R. 293; Craddock *v.* Edwards, 81 Texas, 609, S. C. 17 S. W. R. 228; Locke *v.* Rowell, 47 N. H. 46; Fyffe *v.* Beers, 18 Iowa, 4; Brennan *v.* Wallace, 25 Cal. 108. So, generally, the question of abandonment is usually for the jury. Marshall *v.* Harney Peak, etc., Co. (S. Dak.), 47 N. W. R. 290; Brown *v.* McCormick, 23 Mo. App. 181; Par-

tenant,[1] and the like.[2] Intention is a fact to be proved as any other fact,[3] and where parties are competent witnesses they may testify directly as to their own intent.[4] Malice in fact, or actual malice, such as is required in actions for malicious prosecutions, is also a question of fact for the jury;[5] but where the law conclusively presumes malice from certain acts and those acts are undisputed the question is, of course, one of law for the court.[6]

kins *v.* Dunham, 3 Strob. L. (So. Car.) 224; Taylor *v.* Middleton, 67 Cal. 656. But where the intention does not govern the question is one of law for the court. Brentlinger *v.* Hutchinson, 1 Watts (Pa.), 46; Watson *v.* Gilday, 11 Serg. & R. (Pa.) 337; McDonald *v.* Mulhollan, 5 Watts (Pa.), 173; Jacobs *v.* Figard, 25 Pa. St. 45; State *v.* Seay, 64 Mo. 89, 97.

[1] Henderson *v.* Mears, 1 Fost. & F. 636; Upton *v.* Townsend, 33 Eng. L. & Eq. 212; Lynch *v.* Baldwin, 69 Ill. 210.

[2] Herron *v.* Dibrell, 87 Va. 289, 12 S.E. R. 674 (intent in making representations of quality of article at time of sale); Lee *v.* Burnham, 82 Wis. 209, S. C. 52 N. W. R. 255; Barnes *v.* Brown, 69 N. Car. 439 (payment); Brouwer *v.* Hill, 1 Sandf. (N. Y.) 629; Cross *v.* Barnett, 65 Wis. 431 (whether conveyance was intended for father or son); Smiley *v.* Anderson (Neb.), 44 N.W. R. 86 (whether services were voluntary or not); Western Union Tel. Co. *v.* Stevenson, 128 Pa. St. 442, S. C. 5 L. R. A. 515; Russell *v.* Post, 138 U. S. 425 (intent of defendant charged in civil action with conspiracy to defraud).

[3] Edgington *v.* Fitzmaurice, 55 Law Jour. Rep. (Ch.) 650; 11 Am. & Eng. Ency. of Law, 376.

[4] Kerrains *v.* People, 60 N. Y. 221; Kennedy *v.* Ryall, 67 N. Y. 379; Bidinger *v.* Bishop, 76 Ind. 244; McKee *v.* Perchement, 69 Pa. St. 342; Danforth *v.* Carter, 4 Iowa, 230; Stearns *v.* Gosselin, 58 Vt. 38; Over *v.* Schiffling, 102 Ind. 191; Heap *v.* Parrish, 104 Ind. 36; Delano *v.* Goodwin, 48 N. H. 203; "Evidence of Intent," 22 Cent. L. Jour. 271. Compare Brown *v.* Stark, 83 Cal. 636; Cake *v.* Pottsville Bank, 116 Pa. St. 264; Browne *v.* Hickie, 68 Iowa, 330.

[5] Newell *v.* Downs, 8 Blackf. (Ind.) 523; Strickler *v.* Greer, 95 Ind. 596; Center *v.* Spring, 2 Iowa, 393; Ritchey *v.* Davis, 11 Iowa, 124; Potter *v.* Seale, 8 Cal. 217; Humphries *v.* Parker, 52 Me. 502; Page *v.* Cushing, 38 Me. 523; Moody *v.* Deutsch, 85 Mo. 237; Von Latham *v.* Libby, 38 Barb. (N. Y.) 339; Schofield *v.* Ferrers, 47 Pa. St. 194; Pennsylvania R. R. Co. *v.* Connell, 127 Ill. 419, S. C. 20 N. E. R. 89; Glasgow *v.* Owen, 69 Texas, 167, S. C. 6 S. W. R. 527; Jones *v.* Fruin, 26 Neb. 76, 42 N. W. R. 283; Wagstaff *v.* Schippel, 27 Kan. 450; Gee *v.* Culver, 12 Ore. 228.

[6] Swan *v.* Tappan, 5 Cush. (Mass.) 104; Negley *v.* Farrow, 60 Md. 158, S. C. 45 Am. Rep. 715 (libel and slander cases); Jenkins *v.* State, 82 Ala. 25, S. C. 2 So. R. 150; Kemp *v.* State, 13 Texas App. 561; Sweeney *v.* State, 35 Ark. 585; State *v.* Brown, 12 Minn. 538; Beauchamp *v.* State, 6 Blackf. (Ind.) 299; McDermott *v.* State, 89 Ind. 187; Henning *v.* State, 106 Ind. 386 (malice implied from use of dead-

§ 436. **Laws and ordinances.**—The existence and validity of domestic laws and ordinances are questions for the court to determine,[1] although the existence of any particular foreign law is generally held to be a matter of fact to be proved and submitted to the jury.[2] The interpretation of statutes and other written laws and ordinances is also a matter for the court.[3] As the court must determine the validity of laws and ordinances, it necessarily follows that questions as to their passage[4] and as to the reasonableness of an ordinance[5] are also for the court. So, the reasonableness[6] and validity[7] of the

ly weapon). See, also, notes to Whiteford *v.* Com., 18 Am. Dec. 771, and Spies *v.* People, 3 Am. St. R. 320.

[1] See Gardiner *v.* Collector, 6 Wall. (U. S.) 499; Post *v.* Supervisors, 105 U. S. 667; South Ottawa *v.* Perkins, 94 U. S. 260; Roulo *v.* Valcour, 58 N. H. 347 (existence of ordinance); Sutherland on Stat. Constr., § 181; Cooley's Const. Lim., 159, *et seq.*; 37 Alb. Law Jour., 428, 449.

[2] Holman *v.* King, 7 Metc. (Mass.) 384; Ufford *v.* Spaulding, 156 Mass. 65, 30 N.E.R. 360; Haven *v.* Foster, 9 Pick. (Mass.) 112; Alexander *v.* Penna. Co., 48 Ohio St. 623; Charlotte *v.* Choteau, 33 Me. 194; Cobb *v.* Griffith, etc., Co., 87 Mo. 90; Hooper *v.* Moore, 5 Jones L. (N. Car.) 130; Moore *v.* Gwynn, 5 Ired. L. (N. Car.) 187; Brackett *v.* Norton, 4 Conn. 517; Francis *v.* Ocean Ins. Co., 6 Cow. (N. Y.) 404; Robinson *v.* Dauchy, 3 Barb. (N. Y.) 20; 1 Taylor's Ev., §§ 5, 48. *Contra* Ferguson *v.* Clifford, 37 N. H. 86; 1 Greenl. Ev., § 486; Story on Conflict of Laws, § 638. See, also, Munroe *v.* Douglass, 5 N. Y. 447.

[3] Barnes *v.* Mayor, 19 Ala. 707; Inge *v.* Murphy, 10 Ala. 897; Fairbanks *v.* Woodhouse, 6 Cal. 433; Denver, etc., R. R. Co. *v.* Olsen, 4 Col. 239; Ely *v.* James, 123 Mass. 36; Gibson *v.* Manufacturers' Ins. Co., 144 Mass. 81; Maltus *v.* Shields, 2 Metc. (Ky.) 553; Penna. Co. *v.* Frana, 13 Ill. App. 91; Allen *v.* Duffie, 43 Mich. 1; Carleton *v.* People, 10 Mich. 250; Harris *v.* Doe, 4 Blackf. (Ind.) 369; Large *v.* Orvis, 20 Wis. 696; Ennis *v.* Smith, 14 How. (U. S.) 399. Compare Montgomery *v.* Townsend, 84 Ala. 478, 2 So. R. 155; Mueller *v.* State, 76 Ind. 310; Smith *v.* Boston, etc., R. R. Co., 120 Mass. 490; Holman *v.* King, 7 Metc. (Mass.) 384; Gallatin Turnpike Co. *v.* State, 16 Lea (Tenn.), 36.

[4] South Ottawa *v.* Perkins, 94 U. S. 260.

[5] City of Lake View *v.* Tate, 130 Ill. 247, S. C. 6 L. R. A. 268; Green *v.* City of Indianapolis, 22 Ind. 192; Mayor of Hudson *v.* Thorne, 7 Paige Ch. (N. Y.) 261; Brooklyn *v.* Breslin, 57 N. Y. 591; 1 Beach on Pub. Corp., § 512; 1 Dillon Munic. Corp., § 327; 17 Am. & Eng. Encyc. of Law, 248.

[6] Fertich *v.* Michener, 111 Ind. 472, S. C. 11 N. E. R. 605; Chicago, etc., R. R. Co. *v.* McLallen, 84 Ill. 109; Evison *v.* Chicago, St. Paul, etc., R. R. Co., 45 Minn. 370, S. C. 11 L. R. A. 434; Commonwealth *v.* Worcester, 3 Pick. (Mass.) 462; Memphis, etc., R. R. Co. *v.* Graham, 94 Ala. 545, 10 So. R. 283; Paxson *v.* Sweet, 13 N. J. L. 196; Angell & Ames on Corporations, § 357. Compare State *v.* Overton, 24 N. J. L. 435; Morris, etc., R. R. Co. *v.* Ayres, 29 N. J. L. 393.

[7] Neier *v.* Missouri Pac. R. R. Co.,

regulations and by-laws of a corporation are questions for the court.

§ 437. **Negligence.**—Negligence is usually considered to be a mixed question of law and fact.[1] In other words, the existence or non-existence of negligence in any particular case where the facts are in dispute or more than one reasonable inference can be drawn is a question for the jury to determine under proper instructions from the court.[2] There can be no actionable negligence unless there is some legal duty which the defendant owed to the plaintiff, and whether there is such a duty in any particular case or not is generally a question of law for the court,[3] while it is usually for the jury to determine from the facts and circumstances of the case whether or not

12 Mo. App. 25; State *v.* Overton, 24 N. J. L. 435, S. C. 61 Am. Dec. 671; Hibernia Fire, etc., Co. *v.* Commonwealth, 93 Pa. St. 264; Vedder *v.* Fellows, 20 N. Y. 126; Queen *v.* Sadlers Co., 10 H. of L. Cas. 404, and authorities cited in last note, *supra*.

[1] Trow *v.* Vermont Cent. R. R. Co., 24 Vt. 487, S. C. 58 Am. Dec. 191; Wright *v.* Malden, etc., R. R. Co., 4 Allen (Mass.), 283; Cleveland, etc., R. R. Co. *v.* Terry, 8 Ohio St. 570; Toledo & Wabash R'y Co. *v.* Goddard, 25 Ind. 185; Chicago & Eastern Ill. R. R. Co. *v.* Ostrander, 116 Ind. 259; Baltimore, etc., R. R. Co. *v.* Walborn, 127 Ind. 142; 1 Shearm. & Redf. Neg., § 52; Bishop Non-Cont. Law, § 442.

[2] Baltimore, etc., R. R. Co. *v.* State, 36 Md. 366; Railroad Co. *v.* Maugans, 61 Md. 53; Detroit, etc., R. R. Co. *v.* Van Steinburg, 17 Mich. 99; Indiana Car Co. *v.* Parker, 100 Ind. 181; Evans *v.* Adams Express Co., 122 Ind. 362; Beach on Contrib. Neg., § 161; Woolery, Adm'r, *v.* Louisville, N. A. & C. R'y Co., 107 Ind. 381; Trow *v.* Vermont Cent. R. R. Co., 24 Vt. 487, S. C. 58 Am. Dec. 191; Purvis *v.* Coleman, 1 Bosw. 321; Hunt *v.* Salem, 121 Mass. 294; Eureka Co. *v.* Bass, 81 Ala. 200; Gratiot *v.* Mo. Pac. R. R. Co. (Mo.), 16 L. R. A. 189; Wood *v.* Bridgeport, 143 Pa. St. 167, S. C. 22 Atl. R. 752; Chicago *v.* Moore, 139 Ill. 201, S. C. 28 N. E. R. 1071; Davis *v.* Kan. City Belt R. R. Co., 46 Mo. App. 180; Terre Haute & I. R. R. Co. *v.* Voelker, 129 Ill. 540, S. C. 22 N. E. R. 20, 23; Hepfel *v.* St. Paul, etc., R. R. Co., 49 Minn. 263, 51 N. W. R. 1049; Anderson *v.* North, etc., Co., 21 Ore. 281, S. C. 28 Pac. R. 5; Blanton *v.* Dold (Mo.), 18 S. W. R. 1149; Ala., etc., R. R. Co. *v.* Summers, 68 Miss. 566, S. C. 10 So. R. 63; Kummel *v.* Germania Sav. Bank, 127 N. Y. 488, S. C. 13 L. R. A. 786; Aultman *v.* Falkum, 47 Minn. 414, S. C. 50 N. W. R. 471; Washington, etc., R. R. Co. *v.* McDade, 135 U. S. 554.

[3] Sutton *v.* N. Y., etc., R. R. Co., 66 N. Y. 243; Coppins *v.* N. Y. Cent., etc., R. R. Co., 43 Hun (N. Y.), 26; Nolan *v.* N. Y., etc., R. R. Co., 53 Conn. 461, S. C. 25 Am. & Eng. R. R. Cas. 342; Tarwater *v.* Hannibal R. R. Co., 42 Mo. 193; Philadelphia, etc., R. R. Co. *v.* Fronk, 67 Md. 339; Metropolitan R'y Co. *v.* Jackson, L. R., 3 App. Cas. 193.

there has been a breach of the duty proximately resulting in damage to the plaintiff.[1] It is held, however, that where both the duty and the extent of performance are to be ascertained as facts, the jury should be left to determine what reasonable and ordinary care is required under the circumstances as well as the question of the defendant's failure to exercise such care; or, in other words, that it is for them to determine in such a case what is negligence as well as whether it has been proved.[2] But where the duty is defined, the failure to perform it is negligence and may be so declared by the court.[3] So, where there is

[1] Gerke *v.* California, etc., Co., 9 Cal. 251, S. C. 70 Am. Dec. 650; Lilly *v.* N. Y. Cent., etc., R. R. Co., 107 N. Y. 566; Sloan *v.* Cent. Ia. R. R. Co., 62 Ia. 728; East Tennessee, etc., R. R. Co. *v.* Bayliss, 74 Ala. 150, S. C. 19 Am. & Eng. R. R. Cas. 480; Tabler *v.* Hannibal, etc., R. R. Co., 93 Mo. 79; Milwaukee, etc., R. R. Co. *v.* Kellogg, 94 U. S. 469; White *v.* Missouri Pac. R. R. Co., 31 Kan. 280; Ferren *v.* Old Colony, etc., R. R. Co., 143 Mass. 197, S. C. 9 N. E. R. 608; Grand Trunk, etc., R. R. Co. *v.* Ives, 144 U. S. 408, S. C. 12 Sup. Ct. R. 679; Shoner *v.* Penna. Co., 130 Ind. 170, S. C. 28 N. E. R. 616; Ashman *v.* Flint & P. M. R. R. Co., 90 Mich. 567, 51 N. W. R. 645; Osborne *v.* Detroit, 32 Fed. R. 36.

[2] McCully *v.* Clarke, 40 Pa. St. 399, S. C. 80 Am. Dec. 584; Penna. R. R. Co. *v.* Barnett, 59 Pa. St. 259; Phila. City Pass. R'y Co. *v.* Hassard, 75 Pa. St. 376, 377; Penna. R. R. Co. *v.* Hensil, 70 Ind. 569, 575; Simms *v.* So. Car. R. R. Co., 27 S. Car. 268, S. C. 30 Am. & Eng. R. R. Cas. 571. See, also, Ohio & Miss. R'y Co. *v.* Collarn, 73 Ind. 261; Penna. R. R. Co. *v.* Frana, 112 Ill. 398; Railroad Co. *v.* Stout, 17 Wall. (U. S.) 657; Worthington *v.* Cent. Vt. R. R. Co., 64 Vt. 107, S. C. 23 Atl. R. 590; Omaha *v.* Ayer, 32 Neb. 375, S. C. 49 N.W.R.445; Schneider *v.* Second Ave. R. R. Co., 133 N. Y. 583; Connolly *v.* Waltham, 156 Mass. 368, S. C. 31 N. E. R. 302; Fisher *v.* Cambridge, 133 N. Y. 527; Griffin *v.* Auburn, 58 N. H. 121. And, see particularly, Gratiot *v.* Missouri Pac. R. R. Co. (Mo.), 16 L. R. A. 189, 195, *et seq.*, opinion of Thomas, J., on petition for rehearing, where the entire subject is elaborately considered and forcibly presented.

[3] Empire Transp. Co. *v.* Wamsutta Oil Co., 63 Pa. St. 14; Schum *v.* Penna. R. R. Co., 107 Pa. St. 8; Hoag *v.* Lake Shore, etc., R. R. Co., 85 Pa. St. 293; Clements *v.* La. Electric Light Co.,44 La.Ann.692, 16 L.R.A.43; Karle *v.* Kan.City,etc., R. R. Co., 55 Mo. 476; Delaware, L. & W. R. R. Co. *v.* Converse (U. S.), 4 Lewis' Am. R. R. & Corp. Cas. 434; Grand Trunk, etc., R'y Co. *v.* Ives (U. S.), 6 Lewis' Am. R. R. & Corp. Cas. 130, and note; Terre Haute & I. R. R. Co. *v.* Voelker, 129 Ill. 540, S. C. 22 N. E. R. 20, 24; Chicago & Eastern Ill. R. R. Co. *v.* Boggs, 101 Ind. 522, S. C. 51 Am. R. 761. In North Carolina, it is said in general terms, that "what amounts to negligence is a question of law." Hessing *v.* Wilmington,etc.,R.R.Co.,10 Ired.L.402, S.C. 51 Am.Dec.395; Brock *v.* King, 3 Jones (N. Car. L.), 45; Emry *v.* Raleigh, etc., Co., 109 N. Car. 589, S.

no evidence from which negligence can reasonably be inferred, or where the facts are undisputed and but one reasonable inference can be drawn from them, the question becomes one of law for the court and should be taken from the jury.[1] And where a special verdict is returned, it is for the court to determine as matter of law upon the facts specially found by the jury, whether there is actionable negligence or not.[2]

§ 438. **Notice and knowledge.**—Whether a person or corporation has actual notice or knowledge of a certain fact is a question for the jury to determine from the evidence;[3] and so,

C. 14 S. E. R. 352. It is, of course, to be understood that it is not actionable negligence unless it is also the proximate cause of the injury complained of. For this reason it is sometimes said to be merely evidence of negligence, and there doubtless are peculiar cases in which the circumstances may be such as to excuse the performance of a statutory duty or make the question one for the jury to determine under proper instructions.

[1] Purcell *v.* English, 86 Ind. 34; Faris *v.* Hoberg (Ind.), 33 N. E. R. 1028; Indianapolis & St. Louis, R'y Co. *v.* Watson, 114 Ind. 20; Rush *v.* Coal Bluff Mining Co., 131 Ind. 135; Koons *v.* Western Un. Tel. Co., 102 Pa. St. 164; Brower *v.* Edson, 47 Mich. 91; Barton *v.* St. Louis, etc., R. R. Co., 52 Mo. 253; Penna. R. R. Co. *v.* Righter, 42 N. J. L. 180; Moore *v.* Westervelt, 21 N. Y. 103; Beisiegel *v.* N. Y. Cent. R. R. Co., 40 N. Y. 9; Dahl *v.* Milwaukee City R. R. Co., 62 Wis. 652; Abbett *v.* Chicago, etc., R. R. Co., 30 Minn. 482; Hathaway *v.* East Tenn. R. R. Co., 29 Fed. R. 489; Chaffee *v.* Old Colony, etc., R. R. Co., 17 R. I. 658, S. C. 24 Atl. R. 141; Holland *v.* West End. St. R'y Co., 155 Mass. 387, S. C. 29 N. E. R. 622; Houston *v.* Culver, 88 Ga. 34, S. C. 13 S. E. R. 953; Borden *v.* Delaware, etc., R. R. Co., 131 N. Y. 671, S. C. 30 N. E. R. 586; Chicago, etc., R. R. Co. *v.* Landauer (Neb.), 54 N. W. R. 976; Grand Trunk R'y Co. *v.* Ives (U. S.), 6 Lewis' Am. R. R. & Corp. Cas., 130, and note.

[2] Pittsburgh, C. & St. L. R. R. Co. *v.* Spencer, 98 Ind. 186; Pittsburgh, C. & St. L. R'y Co. *v.* Adams, 105 Ind. 151; Bellefontaine R'y Co. *v.* Hunter, 33 Ind. 335; Conner *v.* Citizens' St. R'y Co., 105 Ind. 62; Louisville, N. A. & C. R'y Co. *v.* Eves, 1 Ind. App. 224; Sprinkle *v.* Taylor, 1 Ind. App. 74. But where more than one reasonable inference can be drawn as to freedom from contributory negligence the jury must find it as a fact. Cleveland, etc., R'y Co. *v.* Granier (Ind.), 34 N. E. R. 714.

[3] Saltmarsh *v.* Bower, 22 Ala. 221; Muldrow *v.* Robinson, 58 Mo. 331; Walworth *v.* Seaver, 30 Vt. 728; Francis *v.* Kansas City, etc., R. R. Co., 110 Mo. 387, S. C. 19 S. W. R. 935; Troxel *v.* Vinton, 77 Ia. 90, S. C. 41 N. W. R. 580; Wheeler *v.* McGuire, 86 Ala. 398, S. C. 2 L. R. A. 808; State *v.* White, 101 N. Car. 770, S. C. 7 S. E. R. 715, S. C. 11 Crim. L. Mag., 231; Reilly *v.* Hannibal, etc., R. R. Co., 94 Mo. 600, S. C. 7 S. W. R. 407; Snyder *v.* Gorden, 46 Hun (N. Y.), 538; Van Hook *v.* Walton, 28 Tex. 59; Rhines *v.* Baird, 41 Pa. St. 256; Brown *v.* Eastern R. R. Co., 11 Cush. (Mass.) 97; Berkshire Woollen Co. *v.* Proctor, 7 Cush. (Mass.) 417.

ordinarily, is the question of the existence of such facts and circumstances as should charge him or it with constructive or implied notice.[1] But the court should instruct the jury as to what is necessary to constitute constructive notice, and, where the facts are undisputed, the case may be so clear and the inference so strong that the court can determine the question as one of law.[2] The question often arises in actions against cities for defects in their streets, and it is generally held that it is for the jury to determine whether the facts and circumstances are such as to charge the city with either actual or constructive notice,[3] although the court may determine the question where the facts and inferences are clear and unequivocal.[4] So, it has been held that whether or not an employe had notice of a rule or regulation of his employer,[5] and whether or not he had knowledge of the dangers of his employment[6] are questions of

[1] Newport *v.* Miller (Ky.), 18 S. W. R. 835; Ft. Wayne *v.* Patterson, 3 Ind. App. 34, S. C. 29 N. E. R. 167; City of Aurora *v.* Bitner, 100 Ind. 396; Nute *v.* Nute, 41 N. H. 60; Chiles *v.* Conley, 2 Dana (Ky.), 21; Schutt *v.* Large, 6 Barb. (N. Y.) 373.

[2] Railroad Co. *v.* Stout, 17 Wall. (U. S.) 657; City of Warsaw *v.* Dunlap, 112 Ind. 576; Appel *v.* Buffalo, etc., R. R. Co., 111 N. Y. 550, S. C. 19 N. E. R. 93; Birdsall *v.* Russell, 29 N. Y. 220; Page *v.* Waring, 76 N. Y. 463; Pollak *v.* Davidson, 87 Ala. 551. Constructive notice in the strict sense of the term, as distinguished from implied notice, is said to be a question or presumption of law which can not be rebutted. Drey *v.* Doyle, 99 Mo. 459; Plumb *v.* Fluitt, 2 Anstr. 428; Kennedy *v.* Green, 3 Mylne & K. 699; Townsend *v.* Little, 109 U. S. 504, S. C. 3 Sup. Ct. R. 357, 357.

[3] Hoey *v.* Natick, 153 Mass. 528, S. C. 27 N. E. R. 595; Turner *v.* City of Newburgh, 109 N. Y. 301, 306; Kunz *v.* City of Troy, 104 N. Y. 344; Ft. Worth *v.* Johnson, 84 Texas, 137, S. C. 19 S. W. R. 361; Colley *v.* Westbrook, 57 Me. 181, S. C. 2 Am. R. 30; City of Aurora *v.* Bitner, 100 Ind. 396; Woolsey *v.* Ellenville, 15 N. Y. Supp. 647; Kunkel *v.* Chicago, 37 Ill. App. 325; Nesbitt *v.* City of Greenville, 69 Miss. 22, S. C. 30 Am. St. R. 521, and note. See, also, Elliott on Roads and Streets, 461.

[4] City of Warsaw *v.* Dunlap, 112 Ind. 576. See, also, Chapman *v.* Mayor, 55 Ga. 566; Klatt *v.* Milwaukee, 53 Wis. 196; City of Chicago *v.* McCarthy, 75 Ill. 602; Elliott on Roads and Streets, 461.

[5] Louisville & N. R. R. Co. *v.* Watson, 90 Ala. 68, S. C. 8 So. R. 249; Francis *v.* Kansas City, etc., R. R. Co., 110 Mo. 387, S. C. 19 S. W. R. 935.

[6] McDermott *v.* N. Y., etc., R. R. Co., 13 N. Y. Supp. 435. So as to the extent of his knowledge of machinery. Ingerman *v.* Moore, 90 Cal. 410, S. C. 25 Am. St. R. 138. See, also, Chicago & St. L. R'y Co. *v.* Ashling, 34 Ill. App. 99; Magee *v.* North. Pac. R. R.

fact for the jury. And whether or not the absence of a flagman from a railroad crossing at which he was stationed is notice to a street-car driver that it is safe to cross, so as to excuse him from looking out for trains, has also been held a question of fact for the jury.[1]

§ 439. **Payment.**—The question of payment is generally one of intent and is therefore a question of fact, or a mixed question of law and fact, for the jury.[2] Thus, whether a note, bill or check was taken as an absolute and unconditional payment or not is a question for the jury to determine.[3] So, it is for the jury to determine upon which of two bills or debts a payment was intended to be made, where the evidence upon the subject is conflicting.[4] So, whether a payment was made by a surety for the benefit of an individual or for the benefit of the firm of which the latter was a member has been held a question of fact for the jury,[5] and the character in which one to whom money is paid receives it has also been held to be a question of fact.[6] The rules in regard to accord and satisfaction, so far at least as the question of intent is concerned, are substantially the same.[7]

Co., 73 Cal. 430, S. C. 21 Pac. R. 114. Compare Appel *v.* Buffalo, etc., R. R. Co., 111 N. Y. 550, S. C. 19 N. E. R. 93.

[1] Richmond *v.* Chicago, etc., R. R. Co., 87 Mich. 374, S. C. 49 N. W. R. 621. See and compare Elliott on Roads and Streets, 605, 608.

[2] Hess *v.* Frankenfield, 106 Pa. St. 440; Germania Ins. Co. *v.* Davenport (Pa.), 9 Atl. R. 517; Briggs *v.* Holmes, 118 Pa. St. 283, S. C. 4 Am. St. R. 597; Barnes *v.* Brown, 69 N. Car. 439; Benton *v.* Toler, 109 N. Car. 238, S. C. 13 S. E. R. 763; Smith's Appeal, 52 Mich. 415; Lyon *v.* Guild, 5 Heisk. (Tenn.) 175; Waters *v.* Waters, 1 Metc. (Ky.) 519; Grantham *v.* Canaan, 38 N. H. 268; Ewing *v.* Peck, 26 Ala. 413; Dean *v.* Toppin, 130 Mass. 517; Wood *v.* Guarantee, etc., Co., 128 U. S. 416, S. C. 9 Sup. Ct. Rep. 131.

[3] Craddock *v.* Dwight, 85 Mich. 587, S. C. 48 N. W. R. 644; Lyman *v.* Bank, 12 How. (U. S.) 225, 243, 244; Johnson *v.* Weed, 9 Johns. (N. Y.) 310, S. C. 6 Am. Dec. 279; Sellers *v.* Jones, 22 Pa. St. 423; Schilling *v.* Durst, 42 Pa. St. 126; Segrist *v.* Crabtree, 131 U. S. 287, S. C. 9 Sup. Ct. Rep. 687.

[4] Yerkes *v.* Norris, 90 Mich. 234, S. C. 51 N. W. R. 366; Phillips *v.* McGuire, 73 Ga. 517; Blair *v.* Lynch, 105 N. Y. 636, S. C. 11 N. E. R. 947.

[5] Welch *v.* Zerger, 29 Ill. App. 348. See, also, McCloskey *v.* McCloskey (Pa.), 16 Atl. R. 30.

[6] Dore *v.* Billings, 26 Maine, 56; 1 Thomp. Tr., § 1256.

[7] Frick *v.* Algeier, 87 Ind. 255; Stone *v.* Miller, 16 Pa. St. 450; Hardman *v.* Bellhouse, 9 Mees. & W. 596; Hall *v.* Flockton, 16 Ad. & El. (N. S.) 1039.

§ 440. **Possession and ownership.**—Questions of possession and ownership are usually mixed questions of law and fact, that is, they are for the jury to determine under proper instructions from the court.[1] It is for the court to decide what is necessary to constitute or establish it and for the jury to decide, under the court's instructions, whether or not it has been established by the evidence in the particular case.[2] But where the facts and inferences to be drawn therefrom are undisputed the question is one of law for the court.[3] So, what constitutes color of title is a question of law,[4] but where it depends upon good faith and that fact is in controversy it is for the jury to determine whether the evidence shows good faith or not.[5] It

See, also, Keerl *v.* Bridgers, 10 Sm. & M. (Miss.) 612; Willard *v.* Germer, 1 Sandf. (N. Y.) 50; Wilson *v.* Hanson, 20 N. H. 375.

[1] Paxson *v.* Bailey, 17 Ga. 600; O'Hara *v.* Richardson, 46 Pa. St. 385; Farnum *v.* Ewell, 59 Vt. 327, S. C. 10 Atl. R. 527; Sovern *v.* Yoran, 15 Ore. 644, S. C. 15 Pac. R. 395; Logan *v.* Friedline (Pa.), 14 Atl. Rep. 343; Miller *v.* Beck, 68 Mich. 76, S. C. 35 N. W. R. 899; Hacker *v.* Horlemus, 69 Wis. 280, S. C. 34 N. W. R. 125; Thomas *v.* England, 71 Cal. 456, S. C. 12 Pac. R. 491; Angle *v* Bilby, 25 Neb. 595, S. C. 41 N. W. R. 397; Siedenbach *v.* Riley, 111 N. Y. 560, S. C. 19 N. E. R. 275; Empire State Type Co. *v.* Grant, 114 N. Y. 40, S. C. 21 N. E. R. 49; Lobdell *v.* Horton, 71 Mich. 681, S. C. 40 N. W. R. 28; Street *v.* Griffiths, 50 N. J. L. 656, S. C. 14 Atl. R. 898; Wheeler *v.* Laird, 147 Mass. 421, S. C. 18 N. E. R. 212; Woods *v.* Montovallo, etc., Co., 84 Ala. 560, S. C. 5 Am. St. R. 393; Slattery *v.* Donnelly, 1 N. Dak. 264, S. C. 47 N. W. R. 375; Peet *v.* Dakota, etc., Co. (S. Dak.), 47 N. W. R. 532; Wood on Limitations, § 258. Compare De Graw *v.* Prior, 60 Mo. 56; Turner *v.* Baker, 64 Mo. 218; Bowie *v.* Brahe, 3 Duer (N. Y.), 35. Ouster is a question for the jury. Taylor *v.* Hill, 10 Leigh (Va.), 457; Cummings *v.* Wyman, 10 Mass. 464; Clark *v.* Crego, 47 Barb. (N. Y.) 599; Harmon *v.* James, 7 Sm. & M. (Miss.) 111; Robidoux *v.* Cassilegi, 10 Mo. App. 516; Carpentier *v.* Mendenhall, 28 Cal. 484. Compare Newmarket Mfg. Co. *v.* Pendergast, 24 N. H. 54.

[2] Johnson *v.* Turner (Md.), 22 Atl. Rep. 1103; Lyles *v.* Roach, 30 So. Car. 291, S. C. 9 S. E. R. 334; Magee *v.* Magee, 37 Miss. 138; Blackman *v.* Welsh, 44 Mo. 41; Carbrey *v.* Willis, 7 Allen (Mass.), 364; Eaton *v.* Jacobs, 52 Me. 445; Wiggins *v.* Holley, 11 Ind. 2; Steffy *v.* Carpenter, 37 Pa. St. 41; State *v.* Cardelli, 19 Nev. 319, S. C. 10 Pac. R. 433; Deerfield *v.* Conn. River R. R. Co., 144 Mass. 325, S. C. 11 N. E. R. 105; Ivey *v.* Williams, 78 Tex. 685, S. C. 15 S. W. R. 163.

[3] Argotsinger *v.* Vines, 82 N. Y. 308; Nearhoff *v.* Addleman, 31 Pa. St. 279; Cornelius *v.* Giberson, 25 N. J. L. 1, 31. See, also, Kitts *v.* Wilson, 130 Ind. 492, S. C. 29 N. E. R. 401.

[4] Woodward *v.* Blanchard, 16 Ill. 424; Shackelford *v.* Bailey, 35 Ill. 387; Turner *v.* Hall, 60 Mo. 271.

[5] Gaines *v.* Saunders, 87 Mo. 557; Woodward *v.* Blanchard, 16 Ill. 424.

has also been held that the question as to whether a title is good and free from material defects is a question of law.[1]

§ 441. **Probable cause.**—The question of probable cause is often called a question of law, and it is properly so called where the facts are ascertained or undisputed,[2] but, generally, it is, perhaps, more properly denominated a mixed question of law and fact. Although some courts use one of these terms and some the other, they do not differ materially as to the law. The difference is one of expression or nomenclature rather than substance. Where there is a controversy as to the facts, it is for the jury to determine what facts are proved by the evidence and for the court to instruct them as to what is necessary in law to constitute probable cause, which is usually done by hypothetical instructions upon the state of facts claimed by each party within the evidence, the court stating whether, if proved, they do or do not constitute or show probable cause.[3] In a few

See, also, Merrill *v.* Hilliard, 59 N. H. 481; Powell *v.* Davis, 19 Tex. 380.

[1] Mead *v.* Altgeld, 136 Ill. 298, S. C. 26 N. E. R. 388; Parmly *v.* Head, 33 Ill. App. 134.

[2] Gilbertson *v.* Fuller, 40 Minn. 413, S. C. 42 N. W. Rep. 203; Moore *v.* Northern Pac., etc., Co., 37 Minn. 147, S. C. 33 N. W. Rep. 334; Stone *v.* Crocker, 24 Pick. (Mass.) 81; McDonald *v.* Atlantic & Pacific R. R. Co. (Ariz.), 21 Pac. Rep. 338; Grant *v.* Moore, 29 Cal. 644; Gurley *v.* Tomkins, 17 Colo. 437, S. C. 30 Pac. Rep. 344; Besson *v.* Southard, 10 N. Y. 236; Farrell *v.* Friedlander, 63 Hun (N. Y.), 254; Cottrell *v.* Cottrell, 126 Ind. 181, S. C. 25 N. E. R. 905; McNulty *v.* Walker, 64 Miss. 198, S. C. 1 So. R. 55; Donnelly *v.* Daggett, 145 Mass. 314, S. C. 14 N. E. R. 161; Moak's Underhill on Torts, 166; Prof. Jury Trials, § 271.

[3] Pennsylvania Co. *v.* Weddle, 100 Ind. 138; Stewart *v.* Sonneborn, 98 U. S. 187; Besson *v.* Southard, 10 N. Y. 236; Masten *v.* Deyo, 2 Wend. (N. Y.) 424; Bulkeley *v.* Smith, 2 Duer (N. Y.), 261; Pangburn *v.* Bull, 1 Wend. (N. Y.) 345; Sweeney *v.* Perney, 40 Kan. 102, S. C. 19 Pac. R. 328; Bell *v.* Matthews, 37 Kan. 686; Glasgow *v.* Owen, 69 Texas, 167, S. C. 6 S. W. R. 527; Cole *v.* Curtis, 16 Minn. 182; Potter *v.* Seale, 8 Cal. 217; Grant *v.* Moore, 29 Cal. 644; Meysenberg *v.* Engelke, 18 Mo. App. 346; Israel *v.* Brooks, 23 Ill. 526; Driggs *v.* Burton, 44 Vt. 124; Johnstone *v.* Sutton, 1 T. R. 545; Caldwell *v.* Bennett, 22 So. Car. 1; Johnson *v.* Miller, 82 Iowa, 693, S. C. 47 N. W. R. 903; Hooper *v.* Vernon, 74 Md. 136, S. C. 21 Atl. R. 556; Joiner *v.* Ocean Steamship Co., 86 Ga. 238, S. C. 12 S. E. R. 361; Lytton *v.* Baird, 95 Ind. 349; Humphries *v.* Parker, 52 Me. 502; Pullen *v.* Glidden, 68 Me. 559; Blachford *v.* Dod, 2 B. & Ad. 179; Panton *v.* Williams, 1 G. & D. 504.

cases, however, some of the courts have left the entire question to the jury upon general instructions.[1]

§ 442. **Reasonable time.**—The term "reasonable time" is a relative one, and what constitutes reasonable time for doing an act in any particular case must depend largely upon the nature and peculiar circumstances of that case. For this reason, perhaps, there is much conflict among the authorities as to when it is a question of law[2] for the court and when it is a question of fact[3] or a mixed question of law and fact[4] for the jury. So far as it is practicable to formulate any general rule upon the subject, the correct rule, as it seems to us, may be stated as follows: Where the facts are undisputed and different inferences can not reasonably be drawn from them, the question is one of law for the court;[5] but if the facts are disputed, especially where they are numerous and complicated, or if more than one reasonable inference may be drawn from them, and there is no fixed rule established by custom or law by which the judge can determine the question without relying

[1] See Anderson *v.* Keller, 67 Ga. 58; Cochran *v.* Toher, 14 Minn. 385, 391; Green *v.* Cochran, 43 Ia. 544; Callahan *v.* Caffarata, 39 Mo. 136; Heyne *v.* Blair, 62 N. Y. 19; Beckwith *v.* Philby, 6 Barn. & Cres. 635.

[2] See Lockwood *v.* Thorne, 11 N. Y. 170; Sice *v.* Cunningham, 1 Cow. (N. Y.) 397; Reilly *v.* Dodge, 131 N. Y. 153, S. C. 29 N. E. R. 1011; Bennett *v.* Lyconing, etc., Ins. Co., 67 N. Y. 274; Chicago, etc., R. R. Co. *v.* Boyce, 73 Ill. 510; Greene *v.* Dingley, 24 Me. 181; Howe *v.* Huntington, 15 Me. 350; Ellis *v.* Paige, 1 Pick. (Mass.) 43; Wiggins *v.* Burkham, 10 Wall. (U. S.) 129; Toland *v.* Sprague, 12 Pet. (U. S.) 300; Hoskin *v.* Fisher, 125 U. S. 217; Hughes *v.* Pipkin, Phill. L. (N. Car.) 4; Doe *v.* Spence, 6 East, 120; Doe *v.* Snowdon, 2 W. Bl. 1224; Startup *v.* MacDonald, 6 Man. & G. 593; Scheibel *v.* Fairbain, 1 Bos. & Pul. 388.

[3] See Joy *v.* Sears, 9 Pick. (Mass.) 4; Gilhooly *v.* N. Y., etc., Navigation Co., 1 Daly (N. Y.), 197; Derosia *v.* Winona, etc., R. R. Co., 18 Minn. 133; Kennedy *v.* Gibbs, 15 Ill. 406; Turner *v.* City of Newburgh, 109 N. Y. 301, 306.

[4] See Bacon *v.* Harris, 15 R. I. 599, S. C. 10 Atl. R. 647; Roth *v.* Buffalo, etc., R. R. Co., 34 N. Y. 548, S. C. 90 Am. Dec. 736; Bassenhorst *v.* Wilby, 45 Ohio St. 333; Field *v.* Nickerson, 13 Mass. 131; Chamberlin *v.* Fuller, 59 Vt. 247, S. C. 9 Atl. R. 832; Wiggins *v.* Burkham, 10 Wall. (U. S.) 129; Davis *v.* Capper, 10 B. & C. 28.

[5] Wright *v.* Bank of Metropolis, 110 N. Y. 237, S. C. 6 Am. St. R. 356; Colt *v.* Owens, 90 N. Y. 368; Hedges *v.* Hudson River R. R. Co., 49 N. Y. 223; Aymar *v.* Beers, 7 Cow. (N. Y.) 705, S. C. 17 Am. Dec. 538, and note; Cookingham *v.* Dusa, 41 Kan. 229, S. C. 21 Pac. R. 95.

merely on his individual notions, it is one of fact, or mixed law and fact for the jury to determine.[1] In accordance with the first proposition in the rule just stated it has been held that, where the facts are undisputed, what is a reasonable time within which the consignee must remove goods consigned to him in order to prevent the liability of the carrier from becoming that of a warehouseman instead of an insurer is a question of law for the court, and that three days is an unreasonable time.[2] So, where an obstruction was placed in a street by a wrong-doer at night and an injury was received by a traveler in falling over it an hour and three-quarters afterwards, it was held that a reasonable time had not elapsed to charge the city with constructive notice, and the judgment against the city was reversed by the Supreme Court on the ground that the verdict was not sustained by the evidence.[3] And in many other cases in which the facts were so clearly proved and the time so long or so short that but one reasonable inference could be drawn the court decided the matter as one of law.[4] So, where the facts are undisputed, what is a reasonable time for giving notice of the dishonor of a negotiable instrument is fixed by the law merchant and is, therefore, as a general rule, a question of law for the court.[5] The same has been held in regard

[1] Luckhart *v.* Ogden, 30 Cal. 548, 558; Cochran *v.* Toher, 14 Minn. 385, 389; Magee *v.* Carmack, 13 Ill. 289, 291; Du Laurans *v.* St. Paul, etc., R. R. Co., 15 Minn. 49; Sproull *v.* Seay, 76 Ga. 27; Hoxie *v.* Iiams, 26 Neb. 616, S. C. 42 N. W. R. 711; State *v.* Hall, 45 Mo. App. 298; Thompson *v.* Douglass, 35 W. Va. 337, S. C. 13 S. E. Rep. 1015; Searcy *v.* Hunter, 81 Texas, 644, S. C. 26 Am. St. R. 837; Sullivan *v.* N. Y., etc., Co., 119 N. Y. 348, S. C. 23 N. E. R. 820; Mead *v.* Parker, 111 N. Y. 259, 262; note to Aymar *v.* Beers, 17 Am. Dec. 538.

[2] Columbus & W. R. R. Co. *v.* Ludden, 89 Ala. 612, S. C. 7 So. R. 471, S. C. 31 Cent. L. J. 89. See, also, Roth *v.* Railroad Co., 34 N. Y. 548; Burnell *v.* N. Y. Cent. R. R. Co., 45 N. Y. 184, 187; Weed *v.* Barney, 45 N. Y. 344, 347; Hutch. Carr., § 376. Compare Scheu *v.* Benedict, 116 N. Y. 510, S. C. 22 N. E. R. 1073.

[3] City of Warsaw *v.* Dunlap, 112 Ind. 576.

[4] See Cookingham *v.* Dusa, 41 Kan. 229, S. C. 21 Pac. Rep. 95; Green *v.* Wright, 36 Mo. App. 298; Druse *v.* Wheeler, 26 Mich. 189; Lamb *v.* Camden, 2 Daly (N.Y.), 454, 474; Nudd *v.* Wells, 11 Wis. 407; Lancaster Bank *v.* Woodward, 18 Pa. St. 357; Nunez *v.* Dautel, 19 Wall. (U. S.) 560, 563.

[5] Bank of Columbia *v.* Lawrence, 1 Pet. (U. S.) 578; Peabody Ins. Co. *v.* Wilson, 29 W. Va. 528, S. C. 2 S. E. R. 888; Hussey *v.* Freeman, 10 Mass. 84;

to presenting a check, draft or note for acceptance or payment,[1] but the contrary has also been held.[2] In accordance with the second proposition stated in our general rule, it has been held that whether delay in receiving logs delivered at a certain place to be loaded on the cars was reasonable is a question for the jury;[3] that whether delay in giving notice of defects in machinery was unreasonable is a question for the jury;[4] and that what is a reasonable time for the owner of lands to perfect his title, so as to make it marketable and entitle a broker to commission, is likewise one of fact for the jury to determine under all the circumstances in evidence.[5] It has also been held that what is a reasonable time for making proof of loss of insured property where the facts are not clearly established,[6] for making and delivering a schedule by one claiming an exemption,[7] for remedying defects in machinery by an employer who has promised his employe to remedy them,[8] for returning a horse

Brenzer *v.* Wightman, 7 Watts & S. (Pa.) 264; Hadduck *v.* Murray, 1 N. H. 140, S. C. 8 Am. Dec. 43; Marks *v.* Boone, 24 Fla. 177, S. C. 4 So. R. 532; Tindal *v.* Brown, 1 T. R. 167; Carrol *v.* Upton, 3 N. Y. 272; Bryden *v.* Bryden, 11 Johns. (N. Y.) 187; Tiedeman on Commerc. Paper, § 337; Chitty on Bills, 366. Compare Bank of Commerce *v.* Chambers, 14 Mo. App. 152; Hopes *v.* Alder, 6 East, 16.

[1] Parker *v.* Reddick, 65 Miss. 242, S. C. 7 Am. St. R. 646; Baskerville *v.* Harris, 41 Miss. 535; Mohawk Bank *v.* Broderick, 10 Wend. (N. Y.) 304; Aymar *v.* Beers, 7 Cow. (N. Y.) 705, S. C. 17 Am. Dec. 538, and note; Dyas *v.* Hanson, 14 Mo. App. 363; Prescott Bank *v.* Caverly, 7 Gray (Mass.), 217; Boyles on Bills, 163; Hadduck *v.* Murray, 1 N. H. 140, S. C. 8 Am. Dec. 43; Durnell *v.* Sowden, 5 Utah, 216, S. C. 14 Pac. R. 334.

[2] Mellish *v.* Rawdon, 9 Bing. 416; Muilman *v.* D'Eguino, 2 H. Bl. 565; Mullick *v.* Radakissen, 28 Eng. L. & Eq. 86; Wallace *v.* Agry, 4 Mason (U. S.), 336; Phœnix Ins. Co. *v.* Allen, 11 Mich. 501. The rule seems to be that when the facts are plain, simple and undisputed the question is one of law for the court, but where they are contradictory and complicated it is for the jury. Tiedeman on Commercial Paper, § 216; 1 Parson on Notes and Bills, 340; 1 Dan. Negot. Instr., § 466; Bassenhorst *v.* Wilby, 45 Ohio St. 333.

[3] Boyington *v.* Sweeney, 77 Wis. 55, S. C. 45 N. W. R. 938. See, also, Wilder *v.* Sprague, 50 Me. 354; Roberts *v.* Mazeppa Mill Co., 30 Minn. 413; Kipp *v.* Wiles, 3 Sandf. (N. Y.) 585; Cocker *v.* Franklin, etc., Co., 3 Sumn. (U. S.) 530.

[4] Fearl *v.* Hanna, 129 Pa. St. 588, S. C. 18 Atl. R. 556.

[5] Dent *v.* Powell, 80 Ia. 456, S. C. 45 N. W. R. 772.

[6] Springfield F. & M. Ins. Co. *v.* Brown, 128 Pa. St. 392, S. C. 18 Atl. R. 396.

[7] Johnston *v.* Willey, 21 Ill. App. 354.

[8] Stephenson *v.* Duncan, 73 Wis. 404, S. C. 41 N. W. R. 337.

discovered to be unsound,[1] for the disaffirmance of a contract by an infant after coming of age,[2] for the disaffirmance of the unauthorized acts of an agent,[3] for the return of counterfeit money or forged paper,[4] for completing repairs by a landlord,[5] and for testing a machine,[6] should be left to the jury to determine under the circumstances of each case. It has been held to be a question of law for the court to determine what is a reasonable time in which to object to an account rendered so as to prevent it from becoming an account stated, where the facts are undisputed,[7] but in other cases it has been held to be a question of fact.[8]

§ 443. **Waiver and abandonment.**—Waiver is often a question of intent, and where such is the case it is generally a question of fact, or a mixed question of law and fact for the jury.[9] Thus, whether a telegraph company by orally receiv-

[1] Gridley *v.* Globe Tobacco Co., 71 Mich.528,S.C.39 N.W.R.754. But it has been held that the time during which a vendee retains a chattel may be so long that, if the delay is unexplained, the court can pronounce it unreasonable as matter of law, so that he would not be entitled to rescind the contract of sale for breach of warranty. Johnson *v.* Whitman, etc., Co., 20 Mo. App. 100; Cookingham *v.* Dusa, 41 Kan. 229, S.C. 21 Pac. R. 95. In such a case there can be but one reasonable inference, and it therefore falls within our rule, making it a question for the court. See, also, and compare Gatling *v.* Newell, 9 Ind. 572; Holbrook *v.* Burt, 22 Pick. (Mass.) 546; Kingsley *v.* Wallis, 14 Me. 57; Parker *v.* Palmer, 4 Barn. & Ald. 387.

[2] Scott *v.* Buchanan, 11 Humph. (Tenn.) 468; Wiley *v.* Wilson, 77 Ind. 596. See, also, Searcy *v.* Hunter, 81 Tex. 644, S. C. 26 Am. St. R. 837.

[3] Porter *v.* Patterson, 15 Pa. St. 229; Minor *v.* Mechanics' Bank, 1 Pet. (U. S.) 46; Minnesota Linseed Oil Co. *v.* Montague, 59 Ia. 448; Parkhill *v.* Imlay, 15 Wend. (N. Y.) 431; Lanfear *v.* Sumner, 17 Mass. 110.

[4] Union Nat. Bank *v.* Baldenwick, 45 Ill. 375; Boyd *v.* Mexico So. Bank, 67 Mo. 537; Burrill *v.* Watertown Bank, 51 Barb. (N. Y.) 105.

[5] Young *v.* Burhans, 80 Wis. 438, S. C. 50 N. W. R. 343.

[6] Cook *v.* Tavener, 41 Ill. App. 642.

[7] Fleischner *v.* Kubli, 20 Ore. 328, S. C. 25 Pac. R. 1086; Oil Co. *v.* Van Etten, 107 U.S. 325; Lockwood *v.* Thorne, 11 N. Y. 170, and compare Lockwood *v.* Thorne, 18 N. Y. 285.

[8] Austin *v.* Ricker, 61 N. H. 97; Peter *v.* Thickstun, 51 Mich. 590.

[9] Traynor *v.* Johnson, 1 Head. (Tenn.) 51; Fitch *v.* Woodruff Iron Works, 29 Conn. 82; Young *v.* Arntze, 86 Ala.116, S. C. 5 So. R. 253; Strain *v.* Pauley Jail, etc., Co., 80 Tex. 622, S.C.16 S.W.R.625; Wing *v.* Thompson, 78 Wis. 256, S. C. 47 N. W. R. 606; Goldenberg *v.* Blake, 145 Mass. 354, S. C. 14 N. E. R. 171; Eagle & P. Mfg. Co. *v.* Belcher, 89 Ga. 218, S. C. 15 S. E. R. 482; International

ing and delivering market quotations, where the exigencies of business do not give time to write them, intends to waive stipulations in its printed blanks is a question for the jury.[1] So, it is for the jury to determine, where the evidence and inferences are conflicting, whether conditions in an insurance policy have been waived.[2] And it is generally for the jury to determine in such cases whether there is a waiver of performance of any of the conditions of any contract.[3] But where there is no dispute as to the facts and inference the question is one of law for the court.[4] So, whether a party has waived defects in a notice or summons by appearing and contesting the case on its merits,[5] or has waived objections by failing to make them at the proper time,[6] or by his admissions and conduct in court has waived rights upon which he might other-

Fair, etc., Ass'n *v.* Walker, 88 Mich. 62, S. C. 49 N. W. R. 1086; Martin *v.* California, etc., R. R. Co., 94 Cal. 326, S. C. 29 Pac. R. 645; North Chicago St. R'y Co. *v.* Williams, 140 Ill. 275, S. C. 29 N. E. R. 672; Sweesey *v.* Durnall, 23 Neb. 531, S. C. 37 N. W. R. 459.

[1] Western Un. Tel. Co. *v.* Stevenson, 128 Pa. St. 442, S. C. 5 L. R. A. 515, S. C. 18 Atl. R. 441.

[2] Peoples' Fire Ins. Co. *v.* Pulver, 127 Ill. 246, S. C. 20 N. E. R. 18; Drake *v.* Farmers', etc., Co., 3 Grant Cas. (Pa.) 325; Franklin Ins. Co. *v.* Updegraff, 43 Pa. St. 350; Coursin *v.* Penna. Ins. Co., 46 Pa. St. 323; Buckley *v.* Garrett, 47 Pa. St. 204; Phoenix Ins. Co. *v.* Munday, 5 Coldw. (Tenn.) 547; Bishop *v.* Agricultural Ins. Co., 130 N. Y. 488, S. C. 29 N. E. R. 844. Compare Ripley *v.* Ætna Ins. Co., 30 N. Y. 136.

[3] Rice *v.* Brown, 81 Me. 56, S. C. 16 Atl. R. 334; Chapman *v.* Colby, 47 Mich. 46; Spaulding *v.* Hallenbeck, 39 Barb. (N. Y.) 79 (under proper instructions); Moore *v.* Carter, 146 Pa. St. 492, S. C. 23 Atl. R. 243.

[4] New Orleans Ins. Ass'n *v.* Matthews, 65 Miss. 301, S. C. 4 So. R. 62; Spring Garden, etc., Ins. Co. *v.* Evans, 9 Md. 1; Mowry *v.* Wood, 12 Wis. 414; Lee *v.* Hassett, 39 Mo. App. 67.

[5] Knox *v.* Summers, 3 Cranch (U. S.), 496; Gracie *v.* Palmer, 8 Wheat. (U. S.) 699; Brayton *v.* Freese, 1 Ind. 121; Walker *v.* City of Aurora, 140 Ill. 402, S. C. 29 N. E. R. 741; Murphy *v.* City of Peoria, 119 Ill. 509, S. C. 9 N. E. R. 895; McLaurin *v.* Baum (Miss.), 12 So. R. 594. See Appearance, Vol. II, Ch. 1.

[6] Warren *v.* Glynn, 37 N. H. 340; Stanley *v.* Bank, 23 Ala. 652; Tarbell *v.* Royal Exchange, etc., Co., 110 N. Y. 170, S. C. 6 Am. St. R. 350; Power *v.* Bowdle (N. Dak.), 54 N. W. R. 404; Andrews *v.* Birmingham, etc., Co. (Ala.), 12 So. R. 432; Perine *v.* Forbush, 97 Cal. 305, S. C. 32 Pac. R. 226; Scott *v.* People, 142 Ill. 291, S. C. 33 N. E. R. 180; Evanston *v.* Gunn, 99 U. S. 660; Indianapolis, D. & W. R'y Co. *v.* Sands, 133 Ind. 433, S. C. 32 N. E. R. 722, and illustrations given in opinion on page 723; Dolan *v.* State, 122 Ind. 141; Dockerty *v.* Hutson, 125 Ind. 102. And see Elliott's Appellate

wise insist, are generally questions of law for the court.[1] Upon undisputed facts and inferences the question of abandonment is also for the court,[2] but in other cases it is a question for the jury to determine as one of intention.[3] Thus, it has been held that where an officer is suspended, but not removed, it should be left to the jury to determine as a matter of fact whether his acceptance of other employment and compensation therefor amounts to an abandonment of the office and a waiver of the salary to which he would otherwise be entitled during the period of suspension.[4]

§ 444. **Miscellaneous questions.**—The following questions have been held questions of fact, or mixed questions of law and fact for the jury: Whether a person accused of murder was so drunk as to be incapable of forming a design or intent;[5] whether a testator had sufficient mental capacity to make a will;[6] whether a person was insane or not;[7] whether a person who killed another had reason to believe he was in imminent danger of death or great bodily harm;[9] whether due diligence was used by railroad employes in extinguishing a fire;[8] whether

Proc., § 674, *et seq.*, where many other authorities are cited.

[1] Long *v.* Valleau (Ia.), 55 N W. R. 31; Bolling *v.* Pace (Ala.), 12 So. R. 796; Webber *v.* Houston, 6 Yerg. (Tenn.) 314; Preston *v.* Simons, 1 Rich. L. (S. Car.) 262; Hartz *v.* Commonwealth, 1 Grant Cas. (Pa.) 359; Kern *v.* Wyatt (Va.), 17 N. E. R. 549; Eckert *v.* Binkley (Ind.), 33 N. E. R. 619; Milbank *v.* Jones, 22 N.Y. S. 525; Dale *v.* Radcliffe, 25 Barb. (N.Y.) 333; Belknap *v.* Godfrey, 22 Vt. 288; Higley *v.* Lant, 3 Mich. 612; Pulling *v.* Supervisors, 3 Wis. 337; Ransom *v.* City of New York, 20 How. (U. S.) 581.

[2] Henry *v.* Bassett, 75 Mo. 89; White *v.* Wright, 16 Mo. App. 551; Chouteau *v.* Jupiter Iron Works, 83 Mo. 73; Dula *v.* Cowles, 7 Jones L. (N. Car.), 290; Thornburgh *v.* Mastin, 93 N. Car. 258; Mims *v.* Lockett, 23 Ga. 237.

[3] Marshall *v.* Harney Peak, etc., Co. (S. Dak.), 47 N. W. R. 290; Parkins *v.* Dunham, 3 Strobh. L. (S. Car.) 224; Avery *v.* Clemons, 18 Conn. 306; Taylor *v.* Middleton, 67 Cal. 656. See, also, § 435, *ante*.

[4] Wardlaw *v.* Mayor, 137 N. Y. 194. Compare State *v.* Seay, 64 Mo. 89.

[5] King *v.* State, 90 Ala. 612, S. C. 8 So. R. 856.

[6] Trezevant *v.* Rains, 85 Texas, 329, S. C. 19 S. W. Rep. 567; Chrisman *v.* Chrisman, 16 Ore. 127, S. C. 18 Pac. R. 6; Best *v.* Best (Ky.), 11 S. W. R. 810.

[7] Fisher *v.* State, 30 Tex. App. 502, S. C. 18 S. W. R. 90.

[8] State *v.* Scheele, 57 Conn. 307, S. C. 18 Atl. R. 256.

[9] Missouri Pac. R. R. Co. *v.* Platzer, 23 Tex. 117, S. C. 11 S. W. R. 160, S. C. 3 L. R. A. 639. See, also, Delaware & H. Canal Co. *v.* Goldstein, 125 Pa. St. 246, S. C. 17 Atl. R. 442; Kelly *v.* Duffy (Pa.), 11 Atl. R. 244.

the use of water from a spring, which is alleged to have diverted it from its channel,[1] or by an upper mill owner, alleged to have obstructed its natural flow to a lower mill,[2] is reasonable or not; questions of value,[3] and questions of the amount of damages.[4] The following questions have been held to be questions of law for the court: Whether delay in applying for the reissue of a patent has been reasonable;[5] whether what was said by the parties constituted a contract or not, where there was no dispute as to the facts and inferences;[6] whether, where the facts were undisputed, there was sufficient evidence of delivery and acceptance to take the contract out of the statute of frauds;[7]

[1] Colrick *v.* Swinburne, 105 N. Y. 503, S. C. 12 N. E. R. 427.

[2] Caldwell *v.* Sanderson, 69 Wis. 52, S. C. 28 N.W. R. 232. See, also, Hazeltine *v.* Case, 46 Wis. 391; Kemmerer *v.* Edelman, 23 Pa. St. 143.

[3] Sergeant *v.* Dwyer, 44 Minn. 309, S. C. 46 N.W. R. 444; Becker *v.* Hecker, 9 Ind. 497; Keystone Brewing Co. *v.* Walker (Pa.), 11 Atl. R. 650; Boody *v.* Watson, 64 N. H. 162, S. C. 9 Atl. R. 794, 812.

[4] Louisville, N. O. & T. R. R. Co. *v.* Mask, 64 Miss. 738, S. C. 2 So. R. 360; Schlitz Brewing Co. *v.* McCann, 118 Pa. St. 314, S. C. 12 Atl. R. 445; Parsons *v.* Missouri Pac. R. R. Co., 94 Mo. 286, S. C. 6 S. W. R. 464; Haldeman *v.* Berry, 74 Mich. 424, S. C. 42 N. W. R. 57; Brunswig *v.* White, 70 Texas, 504, S. C. 8 S. W. R. 85. So, whether any damage resulted from an act. McGregor *v.* Board, 107 N. Y. 511, S. C. 14 N. E. R. 420; Centralia & C. R. R. Co. *v.* Brake 125 Ill. 393, S. C. 17 N. E. R. 820; Montgomery *v.* Townsend, 84 Ala. 478, S. C. 4 So. R. 780; Brown *v.* Western Un. Tel. Co., 6 Utah, 219, S. C. 21 Pac. R. 988. But the measure of damages, that is, the rule for determining the amount, is for the court. Mansfield *v.* N. Y., etc., R. R. Co., 114 N. Y. 331, S. C. 21 N. E. R. 735; Christin *v.* Erwin, 125 Ill. 619, S. C. 17 N. E. R. 707; Wilburn *v.* St. Louis, etc., R. R. Co., 36 Mo. App. 203.

[5] Hoskin *v.* Fisher, 125 U. S. 217.

[6] Royal Ins. Co. *v.* Beatty, 119 Pa. St. 6, S. C. 12 Atl. R. 607. Especially is this true where writings are to be construed. Eyser *v.* Weissgerber, 2 Iowa, 463; Lea *v.* Henry, 56 Ia. 662; Ranney *v.* Higby, 5 Wis. 62; Falls Wire Mfg. Co. *v.* Broderick, 12 Mo. App. 378; Goddard *v.* Foster, 17 Wall. (U. S.) 123. But, generally, the existence of a particular verbal contract is, of course, a question for the jury. 1 Thomp. Tr., § 1114; 19 Am. & Eng. Encyc. of Law, 636; Patten *v.* Pancoast, 109 N. Y. 625, S. C. 15 N. E. R. 893; Chadron School Dist. *v.* Foster, 31 Neb. 501, S. C. 48 N. W. Rep. 267; Roberts *v.* Bonaparte, 73 Md. 191, S. C. 10 L. R. A. 689.

[7] Hinchman *v.* Lincoln, 124 U. S. 38; Davis *v.* Moore, 13 Me. 424. See, also, Fuller *v.* Bean, 34 N. H. 290; Terry *v.* Wheeler, 25 N. Y. 520. But when the facts are disputed, especially if the question turns upon the intent of the parties, the question of delivery and acceptance sufficient to satisfy the statute of frauds, or constitute a completed sale and pass the title are for the jury under proper instructions.

whether an alleged custom is reasonable and valid;[1] and whether a purpresture or permanent structure in a street is a nuisance *per se*.[2]

Riddle *v.* Varnum, 20 Pick. (Mass.) 280; Smith *v.* Dennie, 6 Pick. (Mass.) 262; Houdlette *v.* Tallman, 14 Me. 400; Glass *v.* Gelvin, 80 Mo. 297; Fuller *v.* Bean, 34 N. H. 290; Draper *v.* Jones, 11 Barb. (N. Y.) 263; De Ridder *v.* McKnight, 13 Johns. (N.Y.) 294; Weld *v.* Came, 98 Mass. 152; Kelsea *v.* Haines, 41 N. H. 246; Rhea *v.* Riner, 21 Ill. 526; Chaplin *v.* Rogers, 1 East, 192; Benj. on Sales (3d ed.), § 309. So, whether or not a deed has been delivered is a question for the jury, upon disputed facts, under proper instructions. Hibberd *v.* Smith, 67 Cal. 547; Dearmond *v.* Dearmond, 10 Ind. 191; Burke *v.* Adams, 80 Mo. 504; Hurlburt *v.* Wheeler, 40 N. H. 73; Hannah *v.* Swarner, 8 Watts (Pa.), 9, S. C. 34 Am. Dec. 442; Roll *v.* Rea, 50 N. J. L. 264, S. C. 12 Atl. R. 905.

[1] Chicago Packing, etc., Co. *v.* Tilton, 87 Ill. 547; Bourke *v.* James, 4 Mich. 336.

[2] State *v.* Berdetta, 73 Ind. 185; Pettis *v.* Johnson, 56 Ind. 139. But generally the question as to whether or not an obstruction constitutes a nuisance is for the jury. Blanc *v.* Klumpke, 29 Cal. 156.

CHAPTER XIV.

SETTLING CONTROVERSIES OUT OF COURT BY COMPROMISE.

§ 445. Advising a compromise.
446. Matters to be considered in advising a compromise.
447. Authority to compromise.
448. Offer to compromise.
449. Consideration.
450. Negotiating a compromise.
451. Effect of a compromise.
452. Abandonment and rescission.

§ 445. **Advising a compromise.**—The topic which we here consider is one closely allied in some respects to legal ethics, but it is not our purpose to consider it from the ethical side, although it can not be considered without touching that side. It is often expedient as well as just to advise a compromise and thus prevent litigation, or, as the case may be, put an end to it. In many instances a fair compromise is preferable to a contest. There are many cases where other things than pecuniary loss or gain should receive consideration and be given controlling influence. Where the peace of families is likely to be imperilled a compromise should be brought about if it can be done without a sacrifice greater than justice will permit. Nor is the probability of a strife leading to violence to be left unconsidered. The interests of the client are always and everywhere the chief consideration, and the conscientious advocate will not sacrifice or yield them to promote his own interests. He will not, on the one hand, allow the hope of distinguishing himself in court to influence his course, nor, on the other hand, will he permit a desire to secure the reputation of a lawyer, "who better loves peace and compromises than glory," to impel him to advise a client to yield what in justice ought not to be yielded. While it is true that a lawyer's first duty is to his client yet it is not wrong for him to secure, if he can do so without a breach of duty or a betrayal of trust, the reputation of "a maker of compromises." It carries us but a little aside from our direct path to say that it brings business

to a lawyer to have it known that he advises compromises rather than provokes or encourages litigation, for such a lawyer gets credit for honest dealing that those lawyers who never effect compromises do not obtain. But the interests of the client overshadow all other considerations, and the lawyer who advises the acceptance or rejection of a proposal of compromise must know his client's case in all its details, and carefully weigh the probabilities of success or defeat. It has been said, that "the rights of society are so strong that no forensic contest should be waged, until at least one effort to compromise has been honestly made," but this is true only in a limited sense, if true at all. The rights of society can not extend so far as to require the sacrifice of private rights where justice underlies those rights. It is no doubt expedient as well as just, to make an effort to compromise in many cases before entering into the contest, but it is not so in all. It is well enough always to act upon Shakespeare's admonition to "beware of an entrance into a quarrel," but it is not always necessary to seek a compromise before taking action. It has been said that "there never was a just compromise,"[1] and this, although somewhat extravagant, in a sense is true, for the term itself implies that one of the parties at least surrenders some part of his claim or something to which he is justly entitled; yet the advice given long ago still remains good in many cases: "Agree with thine adversary quickly while thou art in the way with him." Litigation is expensive, and it is often advisable to give up something of that to which we think we are justly entitled rather than to incur the danger of losing it all or having the better part of it eaten up by litigation. This is especially true where the question at issue is a doubtful one, or the amount involved is small and no great principle is at stake.

§ 446. **Matters to be considered in advising a compromise.** —Where there is certainty of success the advocate can seldom

[1] On the other hand it is an old saying: "A bad compromise is better than a good lawsuit." These sayings represent extreme views and as is usually the case both views are wrong.

rightfully advise a compromise, although, for ethical reasons, he may sometimes justly do so; but it is not often in litigated cases that the advocate can be assured of the certainty of success. He may meet unexpected difficulties, and unforeseen disasters may come upon him. He must rely upon the testimony of men and women and upon the judgments of jurors or judges who are, as every one knows, very far from being infallible. Comparatively few cases can be said to be free from doubt. In determining whether it is prudent to compromise a case and yield more than seems fair, it is wise to consider what effect prejudice may have upon the result, for prejudice is a potent factor in forensic contests and sometimes prevails against the law and the evidence. Powerful corporations are always at a disadvantage, for prejudice, often senseless and unreasoning, leads jurors to decide against them, and, it is due truth to say, judges are sometimes controlled by prejudice. A rich man opposed to a poor man is likewise at a disadvantage, and it is often prudent for him to yield what in strict justice he ought not to yield in order to settle the controversy. Prejudice may, it is hardly necessary to suggest, arise from many causes; a party's business may arouse bitter prejudice; his religious or political tenets may do so in some communities, and so may his manner of life. These are a few only of the matters to be considered in determining what influence prejudice is likely to exert, but as each case passes in mental review the thoughtful lawyer will not fail to discover the sources of prejudice and the influence it is likely to exert. The difficulty of procuring evidence and the like are also matters not to be overlooked in determining the advisability of making overtures for a compromise. It is important to keep in mind that the party who is compelled to rely on depositions is not so strong, other things being equal, as the one who can bring his witnesses into the presence of the jury. The fact that one party wages the fight in his own county against one who resides elsewhere is a matter of importance in some instances, since the "man at home," if of good repute, is ordinarily in a better situation than the "man from abroad," even

though the "man from abroad" may come from no great distance. In some cases a matter for consideration is the age and health of a client, for death may end the action or else deprive the advocate of the client's aid. The probability of enforcing a judgment is also to be considered, since, it is hardly necessary to suggest, it is much better to be sure of collecting a judgment, than to take the chances of a return to an execution of *nulla bona*. The hints we have given are sufficient to suggest the matters the advocate should consider, and are quite enough for our purpose, and probably more than many may think needful.[1]

§ 447. **Authority to compromise.**—An attorney, merely by virtue of his employment as such, has no implied power or authority to compromise a claim or action which he is employed to prosecute or defend.[2] But it has been held that if an attorney assumes the right to compromise and does enter into a compromise for the benefit of his client the court will not presume that he did so without lawful authority, and slight evi-

[1] It may not be amiss, however, to add the following advice given by Mr. Warren: "Consider well the opponent with whom you have to deal. * * * If your client be not present, and really approving of what you are doing, you undertake a grave responsibility in consenting to make humiliating acknowledgments or concessions in his name and on his behalf, and may open upon yourself a stream of perpetual bitterness and recrimination hereafter. You should also, on such occasions, consider well the nature of the dispute, which exists, with reference to the admission or acknowledgment insisted on—whether it be, or be not, such an one as warrants such a course, or admits of its being adopted without seriously compromising important and permanent interests or character." Warren's Duties of Attorneys, 206.

[2] Granger *v.* Batchelder, 54 Vt. 248, S. C. 41 Am. R. 846; Whipple *v.* Whitman, 13 R. I. 512, S. C. 43 Am. R. 42; East Line, etc., R. R. Co. *v.* Scott, 72 Texas, 70, S. C. 13 Am. St. R. 758; Township of North Whitehall *v.* Keller, 100 Pa. St. 105, S. C. 45 Am. Rep. 361; Eaton *v.* Knowles, 61 Mich. 625; Repp *v.* Wiles, 3 Ind. App. 167, S. C. 29 N. E. R. 441; Preston *v.* Hill, 50 Cal. 43, S. C. 19 Am. R. 647; Wadhams *v.* Gay, 73 Ill. 415; Robinson *v.* Murphy, 69 Ala. 543, and note to Clark *v.* Randall, 76 Am. Dec. 252, 261, where the earlier cases are collected. The English rule seems to give the attorney more powers. See note to Clark *v.* Randall, *supra*. See, also, Wieland *v.* White, 109 Mass. 392; Potter *v.* Parsons, 14 Iowa, 286; Bonney *v.* Morrill, 57 Me. 368; Jeffries *v.* New York, etc., Co., 110 U. S. 305.

dence may be sufficient to authorize the inference that he was clothed with all the power that he assumed to exercise.[1] So, in another recent case it was held that a fair and judicious compromise made by the attorney for the plaintiff with the assent of the real party in interest, although without the knowledge of the plaintiff of record, would not be disturbed.[2] And there may be unusual cases in which the circumstances are such that authority to compromise will be presumed or implied.[3] An unauthorized compromise may, of course, be ratified by the client in the same manner as that in which the unauthorized act of any agent may be ratified by his principal.[4]

§ 448. **Offer to compromise.**—A mere offer to compromise, unaccepted by the other party, is not binding,[5] and the fact that the plaintiff, before suit, offered to accept a certain sum in payment of his claim if the defendant would settle it without difficulty or trouble, will not prevent him from claiming and recovering a larger sum in an action therefor.[6] But where a defendant used a written statement of the terms of a compro-

[1] East Line, etc., R. R. Co. *v.* Scott, 72 Texas, 70, S. C. 13 Am. St. R. 758. See, also, Holker *v.* Parker, 7 Cranch (U. S.) 436, 452; Roller *v.* Wooldridge, 46 Texas, 485; People *v.* Quick, 92 Ill. 580; Trope *v.* Kerns, 83 Cal. 553.

[2] Whipple *v.* Whitman, 13 R. I. 512, S. C. 43 Am. R. 42. See, also, Williams *v.* Nolan, 58 Tex. 708, 713; Black *v.* Rogers, 75 Mo. 441, 448; Holker *v.* Parker, 7 Cranch (U. S.) 436, 452.

[3] Union Mutual Life Ins. Co. *v.* Buchanan, 100 Ind. 63. See, also, Brockley *v.* Brockley, 122 Pa. St. 1; *In re* Heath's Will, 83 Ia. 215, 48 N. W. R. 1037. So, of course, express authority may be given, and where the attorney was told to do the best he could and the client, who had been vouched to defend an action in ejectment, would repay whatever the principal defendant had to pay, it was held that the attorney had authority to compromise. Freeman *v.* Brehm (Ind.), 31 N. E. R. 545.

[4] Filby *v.* Miller, 25 Pa. St. 264; Culverhouse *v.* Marx, 39 La. Ann. 809; Mayer *v.* Foulkrod, 4 Wash. C. C. 503. See, also, Taylor *v.* Sutton, 6 La. Ann. 709; Vose *v.* Treat, 58 Me. 378; Marshall *v.* Moore, 36 Ill. 321; King *v.* Pope, 28 Ala. 601; Repp *v.* Wiles, 3 Ind. App. 167, S. C. 29 N. E. R. 441.

[5] Clark *v.* Pope, 29 Fla. 238, S. C. 10 So. R. 586. See, also, White *v.* Corlies, 46 N. Y. 467; Strasburg, etc., R. R. Co., *v.* Echternacht, 21 Pa. St. 220, S. C. 60 Am. Dec. 49; Stitt *v.* Huidekopers, 17 Wall. (U. S.) 384; McCallion *v.* Hibernia, etc., Ass'n, 70 Cal. 163; Malby *v.* Osborne, 35 Minn. 387; Indiana, etc., R. R. Co. *v.* Adams, 112 Ind. 302, S. C. 14 N. E. R. 80.

[6] Perkins *v.* Hasbrouck, 155 Pa. St. 494, S. C. 26 Atl. R. 695. See, Miller *v.* Beale, 26 Ind. 234.

mise, signed only by the plaintiff, to have the case dismissed, it was held that he was as much bound thereby as if he had signed it himself.[1] An offer of compromise which has once been declined can not afterwards be accepted so as to bind the person who made it, unless renewed by him or left open for further consideration.[2] But if a debtor tenders part of a disputed debt or claim in full satisfaction thereof and the creditor accepts it the latter is bound by its terms, for he can not accept the tender and at the same time refuse to abide by the terms upon which it is made.[3]

§ 449. **Consideration.**—An agreement to accept in full satisfaction and discharge of a liquidated debt a smaller amount than that acknowledged to be due can not be enforced in the absence of any consideration for such agreement.[4] But where there is a colorable claim, or a doubtful right, a compromise in order to prevent litigation is based upon a sufficient consideration.[5] So, it has been held that a note voluntarily given in renewal of another note procured by fraud, in order to prevent litigation, was based upon a valid consideration.[6] And a good

[1] Bonner *v.* Beard, 43 La. Ann. 1036, S. C. 10 So. R. 373.

[2] Richardson *v.* Lenhard, 48 Kan. 629, S. C. 29 Pac. R. 1076. It was also held in this case that eight days' delay after receiving the offer was too long to expect it to remain open, and that it could not be made binding by an acceptance at the end of that period.

[3] Deutman *v.* Kilpatrick, 46 Mo. App. 624.

[4] The authorities are collected and reviewed by Mr. Greenhood in 17 Cent. Law Jour. 302, who reaches the conclusion that this is the rule in England and in every State except Pennsylvania and Maine. See, also, Donohue *v.* Woodbury, 6 Cush. 148, S. C. 52 Am. Dec. 777, and note; Davis *v.* Stout, 126 Ind. 12; Lathrop *v.* Page, 129 Mass. 19; Geiser *v.* Kershner, 4 Gill & J. 305, S. C. 23 Am. Dec. 566, and note; Deland *v.* Hiett, 27 Cal. 611, S. C. 87 Am. Dec. 102, and note. For many exceptions to the rule, see the leading article in 17 Cent. Law Jour. 302, referred to, *supra*.

[5] Bement *v.* May (Ind.), 34 N. E. R. 327; Shaw *v.* Chicago, etc., R. R. Co. 82 Ia. 199, 47 N. W. R. 1004; Swem *v.* Green, 9 Col. 358; Bellows *v.* Sowles, 55 Vt. 391, S. C. 45 Am. R. 621; United States Bank *v.* Homestead, 18 N. Y. Supp. 758; Battle *v.* McArthur, 49 Fed. R. 715; Hennessy *v.* Bacon, 137 U. S. 78; Smith *v.* Farra, 21 Ore. 395, S. C. 20 L. R. A. 115; White *v.* Hoyt, 73 N. Y. 505; Brooks *v.* Hall, 36 Kan. 697; Griswold *v.* Wright, 61 Wis. 195; Flannagan *v.* Kilcome, 58 N. H. 443; note to Morgan *v.* Hodges, 15 L. R. A. 438.

[6] Clough *v.* Holden (Mo.), 20 S. W. R. 695.

faith composition with creditors whereby each creditor gives up part of his claim and agrees to withhold or withdraw suit and release the debtor upon the payment of a certain other part is valid, as the agreement of the several creditors is a sufficient consideration for that of each of the others.[1] So, where a city was insolvent it was held that a compromise agreement, whereby one who had obtained a judgment against the city assigned her judgment to a trustee for such city, in consideration of which the latter agreed to pay certain costs incurred by the judgment plaintiff in addition to a small sum of money, was based upon a sufficient consideration and was valid, although the amount paid to the plaintiff was less than the face of the judgment.[2] But where the legal rights of the parties are clear and the claim is not made in good faith it is generally held that a promise made in order to obtain a settlement can not be legally enforced,[3] although the mere existence of a controversy is held sufficient by some of the courts.[4] If the claim is unliquidated and there is a dispute simply as to the amount, a promise to pay a certain sum by way of compromise is clearly based upon a sufficient consideration.[5]

[1] Eaton *v.* Lincoln, 13 Mass. 424; Perkins *v.* Lockwood, 100 Mass. 249; Farrington *v.* Hodgdon, 119 Mass. 453; White *v.* Kuntz, 107 N. Y. 518, S. C. 1 Am. St. R. 886; Way *v.* Langley, 15 Ohio St. 392; Henry *v.* Patterson, 57 Pa. St. 346; Steinman *v.* Magnus, 11 East, 390. See, also, "Compositions with Creditors," 17 Cent. Law Jour. 302, 304. But fraud, concealment and misrepresentation by the debtor may avoid the composition. Seving *v.* Gale, 28 Ind. 486; Hefter *v.* Cahn, 73 Ill. 296; Jackson *v.* Hodges, 24 Md. 468; O'Shea *v.* White Lead Co., 42 Mo. 397; S. C. 97 Am. Dec. 332, and note; Dolson *v.* Arnold, 10 How. Pr. (N. Y.) 528; Stafford *v.* Bacon, 1 Hill (N. Y.), 532, S. C. 37 Am. Dec. 366; Huntington *v.* Clark, 39 Conn. 540.

[2] Larned *v.* City of Dubuque (Iowa), 53 N. W. R. 105.

[3] Moon *v.* Martin, 122 Ind. 211; United States Mfg. Co. *v.* Henderson, 111 Ind. 24; Sherman *v.* Barnard, 19 Barb. (N.Y.) 291, 302; Pitkin *v.* Noyes, 48 N. H. 294; Sullivan *v.* Collins, 18 Iowa, 228; Foster *v.* Metts, 55 Miss. 77, S. C. 30 Am. R. 504; Anthony *v.* Boyd, 15 R. I. 495; Fire Ins. Ass'n *v.* Wickham, 141 U. S. 564, 577.

[4] The authorities upon both sides of this question are collected in the exhaustive note to Morgan *v.* Hodges, 15 L. R. A. 438.

[5] Fire Ins. Ass'n *v.* Wickham, 141 U. S. 564, S. C. 12 Sup. Ct. Rep. 84; Stimpson *v.* Poole, 141 Mass. 502.

§ 450. **Negotiating a compromise.**—"As to compromises," says Mr. Chitty, "they may be made and invited by the attorneys on each side; and if made either impliedly, and still more if expressly, without prejudice, they can not be taken advantage of injuriously by either party."[1] At another place, he says: "In negotiations between solicitors of known integrity and honor, there will be no danger from an interchange of candor and liberality; but, unhappily, there is too frequently great risk of the want of reciprocity in candor, and, consequently, unless the honor of the opponent be well known, no communication of facts should be made that could be ungenerously taken advantage of injuriously to the client, even though expressed to be made without prejudice."[2] The customary practice of addressing all communications upon the subject of compromise "without prejudice" is severely criticised by another English author, and he agrees with Mr. Chitty in advising the utmost care in negotiating a compromise. "A plaintiff's or defendant's solicitor," he says, "should never make an offer or a suggestion to the other side, which, if known, would even tend to prejudice the interests of his client."[3] Admissions are always dangerous. It is safest to carry on the negotiations in writing, and then there can be no dispute as to the terms of the compromise. They should generally be carried on between the attorneys, and not between an attorney upon one side and the client of another attorney upon the other, although there may be exceptional cases in which this would be proper. No honorable attorney will seek to compromise a case with the client of another secretly where the latter is acting in good faith, and even if such conduct were honorable it would not, ordinarily, be advisable, as it might afterwards be claimed that undue advantage was taken of the inexperienced client. As a general rule an unaccepted offer or admission by way of compromise is not binding, but care should be taken to have it understood that the offer or admission is confidential and by way of compromise, and not an

[1] 2 Chitty's Gen. Pr., 58.
[2] 2 Chitty's Gen. Pr., 24.
[3] Harris' Before and at Trial, 28.

admission of liability, or, better still, as already suggested, no injurious or unqualified admission should be made. It was held many years ago by the English courts that an offer to settle for a certain sum, not made in confidence or stated to be without prejudice, is admissible in evidence,[1] and it has recently been held by the New York Court of Appeals that evidence of a conversation between the plaintiff and defendant, brought about by the latter without reservation, wherein the defendant offered a certain sum as compensation for injuries inflicted upon the plaintiff was admissible as tending to show an acknowledgment of liability upon the part of the defendant.[2]

§ 451. **Effect of compromise.**—Compromises are favored by the law,[3] and, as we have already seen, a valid compromise is binding upon the parties. It is regarded as finally adjusting all matters growing out of the transaction to which it relates, unless it clearly appears that it is merely conditional or that part of the transaction was not intended to be included in the settlement.[4] Thus, it has even been held that a settlement of all damages sustained by the goring of a horse by a bull is a bar to an action for the subsequent death of the horse from such injury, although the possibility that the injury might result in his death was not considered when the compromise was made.[5] So, where a voluntary settlement of accounts is made it will be presumed that all proper items were included, and, in the absence of fraud or mistake of some kind, this presumption is generally conclusive.[6] And a final settlement and re-

[1] Wallace *v.* Small, 1 Moody & M. 446; Thomson *v.* Austen, 2 Dowl. & R. 358. Compare White *v.* Old Dominion Co., 102 N. Y. 660.

[2] Brice *v.* Bauer, 108 N. Y. 428, S. C. 2 Am. St. R. 454. See, also, Hatcher *v.* Bowen, 74 Ga. 840.

[3] Shank *v.* Shoemaker, 18 N. Y. 489; Wells *v.* Neff, 14 Ore. 66; Steele *v.* White, 2 Paige (N. Y.), 478; Cornell *v.* Masten, 35 Barb. (N. Y.) 157; Penn *v.* Baltimore, 1 Ves. Sr. 444; Royal Society *v.* Campbell, 13 L. R. A. 601, and note.

[4] Caperton *v.* Caperton, 36 W. Va. 635, S. C. 15 S. E. R. 149. See, also, Mateer *v.* Missouri Pacific R. R. Co., 105 Mo. 320, S. C. 16 S. W. R. 839; Howland *v.* Rooke, 158 Mass. 590, S. C. 33 N. E. R. 652.

[5] Currier *v.* Bilger, 149 Pa. St. 109, S. C. 24 Atl. R. 168.

[6] Linville *v.* State, 130 Ind. 210, S. C. 29 N. E. R. 1129.

lease may preclude a recovery upon the claim against the party with whom the compromise was made, although the person who executed it may have mistakenly supposed that he could hold some one else upon the claim,[1] or may afterwards have obtained no benefit from that which he received in settlement because of something entirely outside of any matter in dispute and not within the control of either party.[2] A settlement pending litigation has also been held a sufficient consideration for an agreement to be performed in the future relating to the subject-matter of the litigation.[3] But it has been held that the mere fact of a settlement between a debtor and creditor, which may have included the amount of a secured claim, will not justify a finding that such claim was satisfied and discharged.[4] So, an agreement reciting that all claims "pertaining to the taking of certain corn" were settled in full was held not to include a judgment in an action for malicious prosecution obtained by one of the parties against the other who had charged him with the larceny of such corn.[5] And where an action in which a counter-claim had been filed was discontinued by agreement and no reference was made to the counter-claim it was held that the latter was not discharged by the settlement of the plaintiff's cause of action.[6]

§ 452. **Abandonment and rescission.**—It has been held that an abandonment of a compromise will be presumed where the debtor delays for an unreasonable time to comply with the terms of the settlement and does acts in conflict with his agreement.[7] So, it may be abandoned by agreement of both parties, or one of the parties may rescind it for fraud,[8] and, in some

[1] Battle *v.* McArthur, 49 Fed. R. 715. See, also, Coffee *v.* Emigh, 15 Col. 184, S. C. 10 L. R. A. 125.

[2] Mackall *v.* Casilear, 137 U. S. 556, S. C. 11 Sup. Ct. R. 178.

[3] Robson *v.* Mississippi, etc., Co., 43 Fed. R. 364.

[4] Coleman *v.* Whitney, 62 Vt. 123, S. C. 9 L. R. A. 517. See, also, Hermann *v.* Orcutt, 152 Mass. 405, S. C. 25 N. E. R. 735.

[5] Yates *v.* Kinney, 33 Neb. 853, S. C. 51 N. W. R. 230.

[6] Clancey *v.* Losey, 65 Hun (N. Y.), 625.

[7] Citizens' Bank *v.* Jorda's Heirs, 45 La. Ann. 184, S. C. 11 So. R. 876.

[8] Town *v.* Waldo, 62 Vt. 118, S. C. 20 Atl. R. 325; Berry *v.* American, etc., Ins. Co., 132 N. Y. 49; Davis *v.* Gurney, 38 Ill. App. 520; Anthony *v.* Boyd, 15 R. I. 495; Home Ins. Co. *v.*

cases, on account of mistake.[1] But, "he who seeks equity must do equity," and if the party seeking to rescind the agreement has received anything thereunder he must return or tender it back.[2] He must also use due diligence after discovering the fraud.[3] These rules are in accordance with the general principles governing the doctrine of rescission.[4]

Howard, 111 Ind. 544; S. C. 13 N. E. R. 103.

[1] Epes *v.* Williams (Va.), 17 S. E. R. 235.

[2] Town *v.* Waldo, 62 Vt. 118, S. C. 20 Atl. R. 325; Henderson *v.* Underwriters Ass'n, 65 L. T. (N. S.) 732; Wells *v.* Neff, 14 Ore. 66; Pangborn *v.* Continental Ins. Co. 67 Mich. 683, S. C. 35 N. W. R. 814; Hart *v.* Gould, 62 Mich. 262, S. C. 28 N.W. R. 831. Compare Michigan, etc., Co. *v.* Naugle, 130 Ind. 79, S.C. 29 N. E. R. 393; Reddick *v.* Keesling, 129 Ind. 128.

[3] Lewless *v.* Detroit, etc., R. R. Co., 62 Mich. 292.

[4] See 21 Am. & Eng. Ency. of Law, 24.

CHAPTER XV.

ARBITRATION AND AWARD.

§ 453. Definition.
454. Classes of submission.
455. Importance of discriminating between a general and a partial submission.
456. Statutory and common law submissions.
457. When arbitration is advisable.
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459. Who may submit.
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463. Specific performance of agreement to submit.
464. Effect of agreement upon right to sue.
465. Who may be arbitrators.
466. Arbitrators must act together.
467. Procedure.
468. The award.
469. Effect of award.
470. Enforcement of award.
471. Impeaching and setting aside the award.

§ 453. **Definition.**—One of the modes of adjusting a controversy without going into court is by a submission to arbitration. According to the common law rule civil controversies respecting the rights of persons and things may be by mutual agreement submitted for investigation to persons chosen by the parties.[1] The agreement by which parties refer a matter in dispute to a designated person or persons is usually called a submission,[2] the person to whom it is referred is called an arbitrator and the decision is called an award.[3]

[1] Finley *v.* Funk, 35 Kan. 668, S. C. 12 Pac. Rep. 15; Chicago, etc., Co. *v.* Stewart, 19 Fed. R. 5; Cox *v.* Jagger, 2 Cowen, 638; Green *v.* Ford, 17 Ark. 586; McCracken *v.* Clarke, 31 Pa. St. 498; Austin *v.* Snow's Lessee, 2 Dall. 157; Knight *v.* Burton, 6 Mod. 231; Hunter *v.* Rice, 15 East, 100; Downs *v.* Cooper, 2 Q. B. 256; Penniman *v.* Rodman, 13 Metc. 382; Carey *v.* Wilcox, 6 N. H. 177; Akely *v.* Akely, 16 Vt. 450; Page *v.* Foster, 7 N. H. 392; McNear *v.* Bailey, 18 Me. 251. Criminal cases can not be submitted to arbitration. Hall *v.* Kimmer, 61 Mich. 269, S. C. 1 Am. St. R. 575; Harrington *v.* Brown, 9 Allen, 579. Pure questions of law may be submitted. Ching *v.* Ching, 6 Vesey, 282; Wilkinson *v.* Page, 1 Hare, 276; Price *v.* Hollis, 1 M. & S. 105; Steff *v.* Andrews, 2 Madd. 6.

[2] In one of the old books, quaint in style almost as Izaak Walton's, it is said: "The submission is the power given the arbitrators to pronounce sentence between the parties." The "Compleat Arbitrator," Section II.

[3] Kyd on Awards, 6. An arbitrator

§ 454. **Classes of submission.**—According to the old books a submission may be general, covering the entire matters in dispute between the parties, or it may be conditional, limiting the authority of the arbitrators to specific matters; so, too, it may be absolute and thus confer upon the person selected general authority as to methods and the like, or it may be conditional, requiring him to pursue a designated course or act in a prescribed mode. It seems to us that a better classification than absolute and conditional is general and partial. A general submission may be regarded as one wherein an entire controversy is submitted for decision embracing all incidental questions, whether such questions be questions of law or of fact,[1] and a partial submission may be deemed to be one in

is clothed with functions of a judicial nature, since he is empowered to hear and decide. "The first element of a submission to arbitration is, that it should show an intention of the parties to be concluded by the decision of the arbitrator. But a mere agreement between two persons to be concluded by the decision of a third would not itself constitute that third person an arbitrator. To give him that character there must be a difference between the parties, or his duties must involve the performance of judicial functions. Thus, where it is left to a person to whom the matter is referred to put a value upon something which the parties have already agreed shall be paid for, this is not an arbitration in the proper sense of the term, but in reality an appraisement which prevents differences and does not settle any which have arisen." Redman's Law of Arbitration, 1. We think that the author from whom we have quoted conveys a somewhat erroneous impression by the illustration he employs. It is no doubt true that in a strict sense a person selected to make a mere valuation or appraisement is not an arbitrator. He is usually a mere valuer or appraiser. Garred *v.* Macey, 10 Mo. 161; Curry *v.* Lacky, 35 Mo. 389; Mason *v.* Bridge, 14 Me. 468; McKinney *v.* Page, 32 Me. 513; Collins *v.* Collins, 28 L. J. Ch. 184, S. C. 26 Beav. 306; Bos *v.* Helsham, L. R. 2 Exch. 72; Turner *v.* Goulden, L. R. 9 C. P. 57; Garr *v.* Gomez, 9 Wend. 649; Leeds *v.* Burrows, 12 East, 1; Jenkins *v.* Betham, 15 C. B. 168; Wadsworth *v.* Smith, 40 L. J. Q. B. 118, L. R. 6 Q. B. 332; Efner *v.* Shaw, 2 Wend. 567; Rochester *v.* Whitehouse, 15 N. H. 468. (But see, Smith *v.* Boston, etc., Co., 36 N. H. 458; Leonard *v.* House, 15 Ga. 473.) Where, however, there is an existing controversy and it only concerns value then, as we believe, the person chosen to decide the controversy by hearing evidence and making a decision is an arbitrator. *In re* Hopper, 2 L. R. Q. B. 367; *In re* Evans, 22 L. T. 501.

[1] De Long *v.* Stanton, 9 Johns. 38; Barker *v.* Belknap, 39 Vt. 168; Merritt *v.* Merritt, 11 Ill. 565; Indiana, etc., Co. *v.* Bradly, 7 Ind. 49; Munro *v.* Alaire, 2 Caines, 320; Byers *v.* Van Deusen, 5 Wend. 268; Selliek *v.* Ad-

which specific questions are submitted or parts of a controversy referred to arbitration. It is evident that the division into absolute and conditional is not a logical one, inasmuch as it does not exhaust the subject to be partitioned and admits of confusing cross divisions. This is obvious when it is brought to mind that what the old books call a conditional submission may be either a conditional general submission or a conditional partial one, and so, too, a general or a partial submission may be an absolute one. As the name implies, a conditional submission is one upon condition or one upon which the award is to be effective only in the event of the performance of a designated condition or the happening of a specified contingency.[1] Whether a submission is general or partial depends, it is barely necessary to suggest, upon the terms of the agreement providing for the arbitration.

§ 455. **Importance of discriminating between a general and a partial submission.**—A general submission carries to the arbitrators the principal matter of the controversy submitted and all necessary incidental questions.[2] A partial submission carries to the persons selected to decide the matters in dispute only such questions or matters as are designated in the agreement of the parties.[3] It is important to discriminate between

ams, 15 Johns. 197; Woods *v.* Page, 37 Vt. 252; Thrasher *v.* Haynes, 2 N. H. 429.

[1] Spence *v.* Eastern, etc., Co., 7 Dowl. 697; Inhabitants of Boston *v.* Brazer, 11 Mass. 447; Merritt *v.* Thompson, 27 N. Y. 225.

[2] Wyatt *v.* Lynchburgh, etc., Co., 110 N. Car. 245, S. C. 14 S. E. Rep. 683; Fowler *v.* Jackson, 86 Ga. 337, S. C. 12 S. E. R. 811; Simons *v.* Mills, 80 Cal. 118, S. C. 22 Pac. R. 25; Bryan *v.* Jeffreys, 104 N. Car. 242, S. C. 10 S. E. R. 167; Ives *v.* Ashelby, 26 Ill. App. 244; New York, etc., Co. *v.* Schneider, 119 N. Y. 475, S. C. 24 N. E. Rep. 4; Adams *v.* Great North, etc., Co., — H. of L. Cases, 1891, A. C. 31. See, generally, Terre Haute, etc., Co. *v.* Harris, 126 Ind. 7; Walters *v.* Hutchins, 29 Ind. 136; Armstrong *v.* Masten, 11 Johns. 189; Jessiman *v.* Haverhill, etc., Co., 1 N. H. 68; Masury *v.* Whiton, 111 N. Y. 679, S. C. 18 N. E. R. 638; Dhrew *v.* Altoona, 121 Pa. St. 401, S. C. 15 Atl. R. 636; Phillips' Estate, 48 Phila. Legal Int. 232.

[3] Dodds *v.* Hakes, 114 N. Y. 260, S. C. 21 N. E. R. 398; Turnock *v.* Sartoris, L. R. 43 Ch. D. 150; Cooke *v.* Odd Fellows, etc., Union, 49 Hun, 23, S. C. 17 N. Y. S. R. 490; Knickerbocker, etc., Co. *v.* Smith, 147 Pa. St. 248, S. C. 23 Atl. R. 563; Doane College *v.* Lanham, 26 Neb. 421, S. C. 42 N. W. R. 405; Leslie *v.* Leslie (N. J.),

the two classes of submission for the reason that it is frequently advisable to reserve questions of law for the court, and for the further reason that it is often expedient to submit some of the specific questions in the case to the regular tribunals of the law. When we come to consider the effect of an award we shall show other reasons why discrimination is of importance. Parties may stipulate what matters shall be submitted and thus limit the authority of the arbitrators in all cases where the matter or question is susceptible of division,[1] so that it is important to limit where it is the purpose to place before the arbitrators a part only of a controversy. We can see no reason why parties may not by agreement submit independent specific questions to arbitration in cases where severance can be effected, since the severance is by contract, and in the first instance distinct and independent contracts might have been made in cases where the subject was one of a divisible character.[2]

§ 456. **Statutory and common law submissions.**—In many of the States the statute provides what cases may be submitted

S. C. 24 Atl. R. 1029; King Iron Bridge Co. *v.* St. Louis, 43 Fed. R. 768.

[1] Hurst *v.* Litchfield, 39 N. Y. 377; Hamilton *v.* Home Ins. Co., 137 U. S. 370. But see, as to effect of a statutory provision, Thygerson *v.* Whitbeck, 5 Utah, 406, S. C. 16 Pac. R. 403. See, also, as indicating a different view from that taken in the text, the article entitled "Arbitration and Award as a Condition Precedent," 16 Albany Law J., 464.

[2] In Johnson *v.* Noble, 13 N. H. 286, S. C. 38 Am. Dec. 485, the court said: "And it is a necessary result from the power to submit generally, that they have also the power and right to limit the authority conferred, and its exercise, in such manner as may be deemed expedient. If, however, no reservation is made in the agreement of submission the parties are presumed to agree that every consideration, both of law and fact, which can affect the final and ultimate decision of the cause, is included in the authority of the referees and is matter proper for their determination. 2 Story's Eq., section 1454; Kleine *v.* Catara, 2 Gall. 61; Walker *v.* Sanborn, 3 Greenl. 288. Under a general submission, therefore—by which I mean a submission containing no express reservation or limitation upon the authority conferred—both the law and fact are submitted to the judgment of the arbitrators, or referees, for their consideration and decision. And it is very well settled that, in such case, arbitrators are not restricted by the submission to decide according to strict principles of law, but their decision will be in conformity with the submission, although it may be made in disregard of the law and contrary thereto."

to arbitration and prescribes the mode of procedure, and in some of the States the submission to arbitration is almost entirely statutory. As it is not our purpose to consider specific statutes upon any subject, and as we propose to give only a general outline of the subject of arbitration and award, we shall not do more than refer in a general way to the statutes and their effect. It is held by many of the courts that where the statute does not expressly or by necessary implication forbid resort to the common law mode of arbitration and award it may be pursued and the statutory proceeding will be regarded as merely cumulative. Where the two systems are recognized the parties may elect under which of the two they will proceed.[1] If a party seeks the benefit of the statutory arbitration he should proceed under the statute, for a common law award is not enforceable as a statutory one.[2] If the submission is valid under the common law rule it may be upheld even though the parties undertook to proceed under the statute but failed because of a neglect to comply with its requirements.[3] Where the statute

[1] Titus *v.* Scantling, 4 Blackf. 89; Carson *v.* Earlywine, 14 Ind. 256; Miller *v.* Goodwine, 29 Ind. 46; Forqueron *v.* Van Meter, 9 Ind. 270; Hawes *v.* Combs, 34 Ind. 455; Smith *v.* Kirkpatrick, 58 Ind. 254; Byard *v.* Harkrider, 108 Ind. 376; Kelley *v.* Adams, 120 Ind. 340; Wells *v.* Lain, 15 Wend. 99; Logsdon *v.* Roberts, 3 Monr. 255; Overly *v.* Overly, 1 Metc. (Ky.) 117; Byrd *v.* Odem, 9 Ala. 755; Lamar *v.* Nicholson, 7 Porter (Ala.), 158; Conger *v.* Dean, 3 Clarke (Iowa), 463; Fink *v.* Fink, 8 Clarke (Iowa), 313; Howard *v.* Sexton, 4 N. Y. 157; Diedrick *v.* Richley, 2 Hill, 271, note; *In re* Kreiss (Cal.), S. C. 28 Pac. R. 808; Hartford Fire Ins. Co. *v.* Bonner, etc., Co., 44 Fed. R. 151. The decisions of the New York Court of Appeals are in apparent conflict upon this question. Bulson *v.* Lohnes, 29 N. Y. 291; Burnside *v.* Whitney, 21 N. Y. 148. See, generally, Brown *v.* Kincaid, Wright (Ohio), 37; Wilkes *v.* Cotter, 28 Ark. 519; Eisenmeyer *v.* Sauter, 77 Ill. 515.

[2] Conger *v.* Dean, 3 Clarke (Iowa), 463; Foust *v.* Hastings, 66 Iowa, 522; Fink *v.* Fink, 8 Iowa, 313; Love *v.* Burns, 35 Ia. 150; Deerfield *v.* Arms, 20 Pick. 480, S. C. 32 Am. Dec. 228; Pierce *v.* Kirby, 21 Wis. 124; Williams *v.* Walton, 9 Cal. 142; Barney *v.* Flower, 27 Minn. 403; Davis *v.* Berger, 54 Mich. 652; Hamilton *v* Hamilton, 27 Ill. 158; Price *v.* Byne, 57 Ga. 176; Boots *v.* Canine, 94 Ind. 408; Francis *v.* Ames, 14 Ind. 251; Estep *v.* Larsh, 16 Ind. 82; Healy *v.* Isaacs, 73 Ind. 226; Hawes *v.* Combs, 34 Ind. 455; Boots *v.* Canine, 58 Ind. 450; Wright *v.* Raddin, 100 Mass. 319; Smith *v.* Pollock, 2 Cal. 92; Holdridge *v.* Stowell, 39 Minn. 360, S. C. 40 N. W. R. 259.

[3] Thornton *v.* McCormick, 75 Ia. 285; McKinnis *v.* Freeman, 38 Iowa, 364;

provides an exclusive mode of procedure or provides what matters may be submitted to arbitration, and in so providing abrogates the common law, there can, of course, be only a statutory system, and only such matters can be submitted as the statute prescribes.[1]

§ 457. **When arbitration is advisable.**—Most controversies are better and more justly settled by a court or jury than by persons selected by the parties. It is the experience of most lawyers that arbitration is generally an unsatisfactory mode of settling legal controversies. There are, however, cases where arbitration is expedient and satisfactory. Where the opposing parties are intelligent and active business men and the dispute concerns purely business matters it is often expedient to submit to arbitration provided always that intelligent men actively engaged in business can be secured as arbitrators. Cases where the controversy involves long and complicated accounts are better considered and determined by a competent arbitrator than by a jury or by a busy judge,[2] but in such cases one competent referee or arbitrator is usually better than two or more. Corporations as a rule profit by a submission to arbitration since jurors are ordinarily impressed with the belief that they are more powerful than individuals, and in most cases are prejudiced against them. There is, too, a feeling,—and one very frequently manifested,—that a corporation is a sort of unreal organization and that in punishing it or in mulcting it in damages a private individual may be benefited without harm to any natural person. One who believes that justice will entitle him to succeed but fears that a harsh statutory pro-

Burroughs *v.* David, 7 Iowa, 154; Galloway *v.* Gibson, 51 Mich. 135; Willingham *v.* Harrell, 36 Ala. 583; Tyler *v.* Dyer, 13 Me. 41; Tynan *v.* Tate, 3 Neb. 388; Low *v.* Nolte, 16 Ill. 475; Myers *v.* Easterwood, 60 Texas, 107; Lusk *v.* Clayton, 70 N. Car. 184.

[1] McClendon *v.* Kemp, 18 La. Ann. 162.

[2] Hawkshead gives us this anecdote, "I was once," he writes, "in the Court of King's Bench, when one of the counsel was making a motion upon an affidavit filled with matters of account and calculation of figures which he was detailing to the judges who rose, and one of them said (interrupting him), 'This court does not sit here as accountants,' and they retired." Essay on Wills, 335.

vision or strict rule of law may operate against him is wise to secure, if he can, a submission to arbitration, for arbitrators are inclined to be governed by what they consider the broad principles of natural justice, rather than abstract rules of law. The law recognizes the right of arbitrators to act, within limits, upon their conceptions of justice and excuses a departure from rigid technical or arbitrary rules.[1] Where the controversy concerns an article of property, as a house or a patented machine, and the dispute turns upon the question whether in constructing it the contract has been complied with, it is often expedient to submit to arbitration, provided competent persons, skilled in the particular trade which the controversy concerns, can be procured to act as arbitrators, since such persons upon view can form a more accurate and just judgment than judges or jurors can form upon the testimony of witnesses. It has been said, however, that "in building contracts the owner generally profits and the mechanic loses by arbitration, for jurors are for giving the workman his hire." It is true, as every one will readily conclude on reflection, that much depends upon the situation of the parties and that in the majority of cases where arbitration is expedient for the one party it is inexpedient for the other, but there are, nevertheless, cases where it is better for both parties to call in arbitrators to settle their dispute.[2]

[1] "And it is expected of arbitrators that they will frame their decision of matters submitted to them on broad views of justice which may sometimes deviate from the strict rules of law." Brush *v.* Fisher, 70 Mich. 469, S. C. 14 Am. St. R. 510. See, generally, Johnson *v.* Noble, 13 N. H. 286, S. C. 38 Am. Dec. 485; Bigelow *v.* Newell, 10 Pick. 348; Greenough *v.* Rolfe, 4 N. H. 357; Brown *v.* Clay, 31 Me. 518; Spear *v.* Stacy, 26 Vt. 61; Price *v.* Brown, 98 N. Y. 388; Sabin *v.* Angell, 44 Vt. 523; Ruckman *v.* Ransom, 23 N. J. Eq. 118; Burchell *v.* Marsh, 17 How. (U. S.) 344; Adams *v.* Ringo, 79 Ky. 211; Memphis, etc., Co. *v.* Scruggs, 50 Miss. 284; Mathews *v.* Miller, 25 W. Va. 817.

[2] Mr. Chitty, whose advice is always valuable, says, "Other cases fit to be referred, are frequently those where it would be impracticable or difficult to collect or keep together several witnesses, so as to attend upon a fixed day at *nisi prius;* or of disputes between neighbors, respecting supposed nuisances by building or otherwise, to ancient rights or water-courses, ways or other property, where not only the rights of the parties may be referred, and the damages, but also the question whether, upon any and what terms, and subject to what modifica-

§ 458. **When arbitration is inexpedient.**—As we said in the preceding paragraph, what is expedient for the one party is generally inexpedient for his adversary. Thus, if the one party fears that his witnesses because of timidity, or by reason of other causes, will not acquit themselves well in open court where all is public, he will prefer arbitration, since the proceedings are more privately and quietly conducted; on the other hand, the party who believes that a rigid cross-examination will break down the witnesses of his adversary and not impair the testimony of his own will prefer a trial in open court. If a party desires that the rules of evidence be strictly observed he will not submit his case to arbitration, for arbitrators are not bound to strictly obey the rules of evidence,[1] and that they are generally quick to disregard them every lawyer of experience knows. It is possible that theoretically it may be true that the arbitrators are under a duty to adhere generally, although not strictly, to the rules of evidence, but practically they are at liberty to do what they choose,[2] provided

tions, the alleged nuisance shall or not be continued. So, as an award upon a title to land is binding on all the parties, it would be proper in questions of right to small property to refer the matter to some competent person. So, subjects of delicacy, unfit to be exposed to public investigation, especially between near relations, should be referred, unless some injury to character has been occasioned." 2 Chitty's General Practice, 75.

[1] Some of the cases carry the doctrine to great and unreasonable lengths. Thus, in one case it was said: "We think there is no doubt that the referees might receive the testimony of a legally incompetent witness if in their judgment the justice of the case required it." Fuller *v.* Wheelock, 10 Pick. 135. This is, perhaps, a stronger statement of the abstract rule than the authorities warrant, but the decided cases go very far in the same direction. Boston Water Power Co. *v.* Gray, 6 Metc. (Mass.) 131; Hooper *v.* Taylor, 39 Me. 224; Maynard *v.* Frederick, 7 Cush. 247; Eyre's Executor, *v.* Fennimore, 2 Penning. 932; Campbell *v.* Western, 3 Paige, 124; Pike *v.* Gage, 9 Foster (N. H.), 461; Bassett *v.* Cunningham, 9 Gratt. 684; McCrae *v.* Robeson, 2 Murph. (N. Car.) 127; Chesley *v.* Chesley, 10 N. H. 327; Shaifer *v.* Baker, 38 Ga. 135; Hollingsworth *v.* Leiper, 1 Dall. 161; Askew *v.* Kennedy, 1 Baily (S. Car.), 46; Fennimore *v.* Childs, 1 Halst. (N. J.) 386.

[2] An English author says: "Questions relating to the admissibility of evidence continually arise in the course of the proceedings in the reference and call for the arbitrator's decision. In determining these he is not at liberty to follow any arbitrary principle of his own, but he is bound by the same rules of evidence as gov-

that their conduct in ruling on the evidence is not so outrageous or so flagrantly wrong as to authorize the conclusion that they acted corruptly or were unduly influenced by bias or prejudice.[1] Our reason for saying that practically they can do as they please, is, that if they err, be it ever so grievously, there is, even under the English rule quoted from the author referred to in the note, no power of review.[2] It is evident from what has been said that it would be a mistake for a party who desires to make errors in the admission or exclusion of evidence available to agree to an ordinary submission to arbitration. The rule that arbitrators may decide according to their own broad views of justice without due regard to the strict rules of law makes it inexpedient and impolitic for a party who expects to stand upon a strict legal right to leave to arbitrators the decision of his case. Thus, one who expects to stand upon the statute of frauds where the equities press strongly against him would be unwise to refer the case to arbitrators, and so, too, would a party who, under like circumstances, relies upon the statute of limitations. Where a party desires to have questions of law fully presented for review it is always safer to try by the court or jury and secure a direct ruling upon each material question by special findings, instructions, special verdicts or the like, and this is especially true in cases where a forfeiture, a hard bargain, or similar matters are relied upon as the cause of action or defense. It is injudicious to refer to arbitration where the rights of sureties, replevin bail, or persons standing in similar positions, are involved unless such

ern the superior courts." Russell on the Power and Duty of an Arbitrator (7th Eng. ed.), 199. This is a correct statement of what an arbitrator ought to do, at least as a rule, but it is doubtful if it is a correct statement of what he is bound to do even under the English rule. Hagger *v.* Baker, 14 M. & W. 9.

[1] As we have elsewhere said we are speaking of common law arbitrations, not of statutory ones, and we may add that we speak of arbitrations so far only as it is necessary in considering matters of general practice. We have treated at another place of impeaching awards.

[2] Eastern, etc., Co. *v.* Robertson, 6 Man. & G. 38; Armstrong *v.* Marshall, 4 Dowl. 593; Perriman *v.* Steggall, 9 Bing. 679; Campbell *v.* Twemlow, 1 Price, 81; Musselbrook *v.* Dunkin, 9 Bing. 605; Slowman *v.* Wiggins, 6 C. B. A. 276.

persons fully consent or agree to the submission or are parties to it.

§ 459. **Who may submit.**—As a general rule, any person of legal capacity to contract may submit to arbitration; but he must have such control over the subject-matter or his relations thereto must be such that he can carry out the award when made.[1] The rule applies to corporations as well as natural persons.[2] The submission by an infant of a controversy to arbitration is generally regarded as voidable,[3] although it is sometimes said to be void. Within the limitation stated in our general rule attorneys and agents generally may submit a matter to arbitration so as to bind their principal when they have either express or implied authority so to do;[4] but, ordinarily, no such authority will be implied from the mere existence of a general agency.[5] In the case of an attorney, however, the submission of a pending controversy to arbitration may well be presumed to be within the scope of his employment to pros-

[1] Bean *v.* Farnam, 6 Pick. (Mass.) 272; Brady *v.* Mayor, 1 Barb. (N. Y.) 584; Wyatt *v.* Benson, 23 Barb. (N. Y.) 327.

[2] Brady *v.* Mayor, 1 Barb. (N. Y.) 584; Alexandria Canal Co. *v.* Swann, 5 How. (U. S.) 83; Madison Ins. Co. *v.* Griffin, 3 Ind. 277; Wood *v.* Auburn, etc., R. R. Co., 8 N. Y. 160; Proprietors *v.* Frye, 5 Greenl. (Me.) 38; City of Shawneetown *v.* Baker, 85 Ill. 563; Tuscaloosa Bridge *v.* Jemison, 33 Ala. 476; Kane *v.* Fond du Lac, 40 Wis. 495; Dix *v.* Town, 19 Vt. 262; Remington *v.* Harrison Co., 12 Bush. (Ky.) 148; District Tp. *v.* Rankin, 70 Ia. 65, 29 N. W. R. 806; State *v.* Ward, 9 Heisk. (Tenn.) 100; Memphis, etc., R. R. Co. *v.* Scruggs, 50 Miss. 284. Compare City of Somerville *v.* Dickerman, 127 Mass. 272; McCann *v.* Com'rs, 9 Neb. 324.

[3] Britton *v.* Williams, 6 Munf. (Va.) 453; Baker *v.* Lovett, 6 Mass. 78, S. C. 4 Am. Dec. 88; Jones *v.* Phœnix Bank, 8 N. Y. 228; Barnaby *v.* Barnaby, 1 Pick. (Mass.) 221. See and compare Godfrey *v.* Wade, 6 Moore, 488; Evans *v.* Cogan, 2 P. Wms. 450; Handy *v.* Cobb, 44 Miss. 699. It has been held that those who have capacity can not object that the submission was not binding because some of the parties were infants. Fortune *v.* Killebrew (Texas), 21 S. W. R. 986.

[4] Buckland *v.* Conway, 16 Mass. 396; Schoff *v.* Bloomfield, 8 Vt. 472; Wilks *v.* Back, 2 East, 142; Henley *v.* Sofer, 8 Barn. & C. 16; Sargeant *v.* Clark, 108 Pa. St. 588; McElreath *v.* Middleton, 89 Ga. 83, S. C. 14 S. E. R. 906.

[5] Huber *v.* Zimmerman, 21 Ala. 488, S. C. 56 Am. Dec. 255; Michigan Central R. R. Co. *v.* Gougar, 55 Ill. 503; Trout *v.* Emmons, 29 Ill. 433, S. C. 81 Am. Dec. 326; McPherson *v.* Cox, 86 N. Y. 472; Cox *v.* Fay, 54 Vt. 446.

ecute or defend the action in any legal and customary mode, and it is therefore generally held that the right to submit a pending action to arbitration, at least in open court, will be implied from his employment.[1] But he can not change the terms of a submission made by his client without the latter's consent.[2] Guardians[3] and executors or administrators[4] generally have the power by virtue of their office to submit matters respecting the estate to arbitration. So have trustees, in some cases.[5] And it has also been held that the common council of a city or the selectmen of a town or county have the same power.[6] One partner has no authority to bind his co-partners by the submission of a partnership matter to arbitration, without their consent.[7] But the consent of the other partners may

[1] McElreath *v.* Middleton, 89 Ga. 83, S. C. 14 S. E. Rep. 906; Buckland *v.* Conway, 16 Mass. 396; Morris *v.* Grier, 76 N. Car. 410; Bingham *v.* Guthrie, 19 Pa. St. 418; Brooks *v.* New Durham, 55 N. H. 559; Jones *v.* Horsey, 4 Md. 306, S. C. 59 Am. Dec. 81; Lee *v.* Grimes, 4 Col. 185; Beverly *v.* Stephens, 17 Ala. 701; Smith *v.* Bossard, 2 McCord's Ch. (So. Car.) 406; Holker *v.* Parker, 7 Cranch (U. S.), 436; Smith *v.* Troup, 7 Com. B. 757; Banfill *v.* Leigh, 8 T. R. 571. But the right to make such a submission *in pais*, outside of court, is denied by some of the courts. McGinnis *v.* Curry, 13 W. Va. 29; Daniels *v.* City of New London, 58 Conn. 156, S. C. 7 L. R. A. 563; Markley *v.* Amos, 8 Rich. L. (So. Car.) 468; Scarborough *v.* Reynolds, 12 Ala. 252.

[2] Daniels *v.* City of New London, 58 Conn. 156, S. C. 7 L. R. A. 563; Jenkins *v.* Gillespie, 10 Smed. & M. (Miss.) 31, S. C. 48 Am. Dec. 732.

[3] Weed *v.* Ellis, 3 Caines (N. Y.), 253; Strong *v.* Beroujon, 18 Ala. 168; Weston *v.* Stuart, 11 Me. 326; Hutchins *v.* Johnson, 12 Conn. 376, S. C. 30 Am. Dec. 622; McComb *v.* Turner, 14 Smed. & M. 119; Smith *v.* Kirkpatrick, 58 Ind. 254. But not a mere guardian *ad litem*. Fort *v.* Battle, 13 Smedes & M. 133; Hannum *v.* Wallace, 9 Humph. (Tenn.) 129.

[4] Wood *v.* Tunnicliff, 74 N. Y. 38; Kendall *v.* Bates, 35 Me. 357; Alling *v.* Munson, 2 Conn. 691; Yarborough *v.* Leggett, 14 Texas, 677; Jones *v.* Deyer, 16 Ala. 221; Chadbourn *v.* Chadbourn, 9 Allen (Mass.), 173; Bailey *v.* Dillworth, 10 Smed. & M. 404, S. C. 48 Am. Dec. 760. *Contra*, Clark *v.* Hogle, 52 Ill. 427.

[5] Brower *v.* Osterhout, 7 Watts. & S. (Pa.) 344; Isaacs *v.* Beth Hamedash Soc., 1 Hilt. 469; Davies *v.* Ridge, 3 Esp. 101. Compare Thomas *v.* Leach, 2 Mass. 152.

[6] Campbell *v.* Upton, 113 Mass. 67; Buckland *v.* Conway, 16 Mass. 396; Dix *v.* Town, 19 Vt. 262; People *v.* Supervisors, 24 Hun (N. Y.), 413; Hine *v.* Stephens, 33 Conn. 497, S. C. 89 Am. Dec. 217. Compare Mann *v.* Richardson, 66 Ill. 481; Furbish *v.* Hall, 8 Greenl. (Me.) 315; Town of Griswold *v.* North Stonington, 5 Conn. 367.

[7] Tillinghast *v.* Gilmore, 17 R. I. 413, 22 Atl. R. 942; Buchanan *v.* Curry, 19 Johns. (N. Y.) 137, S. C. 10 Am. Dec.

be implied from circumstances [1] One of several joint owners, or persons jointly interested, can not, ordinarily, bind the others by a submission to arbitration without special authority.[2] As to the effect of submissions by married women, or by husband and wife, much depends upon the statute of the particular jurisdiction. Mr. Morse states the general rules upon the subject as follows: "The wife may bind herself by her own sole submission in respect of any property in regard to which she has the absolute power of disposal and conveyance by her own independent and individual action; but she may not bind herself otherwise than in respect of such property. The husband may bind the wife to any undertaking, provided that he has the power to carry out the possible terms of the award without her joinder or acquiescence; or provided that the law would enforce such joinder or acquiescence, if it were legally indispensable to the due performance of the award."[3] This statement furnishes a general rule upon the subject, but, as is readily seen, in order to determine the law in any particular jurisdiction, it must be supplemented by a consideration of the local statute, as the relations of husband and wife and the right of the wife to enter into contracts have been greatly changed by legislative enactments of a recent date.

§ 460. **What may be submitted.**—A claim which is illegal and absolutely forbidden by statute can not lawfully be made the subject of arbitration.[4] It is not necessary, however, that

200; Davis *v.* Berger, 54 Mich. 652; Jones *v.* Bailey, 5 Cal. 345; Martin *v.* Thrasher, 40 Vt. 460; Karthaus *v.* Ferrer, 1 Pet. (U. S.) 222; Backus *v.* Coyne, 35 Mich. 5; Stead *v.* Salt, 3 Bing. 101. In several States, however, it is held that one partner may make a parol submission which will bind all. Taylor *v.* Coryell, 12 Serg. & R. (Pa.) 243; Southard *v.* Steele, 3 T. B. Mon. (Ky.) 435; Hallack *v.* March, 25 Ill. 48; Wilcox *v.* Singletary, Wright (Ohio), 420.

[1] Mackay *v.* Bloodgood, 9 Johns. (N. Y.) 285; Davis *v.* Berger, 54 Mich. 652; Russell on Arb., 20.

[2] Eastman *v.* Burleigh, 2 N. H. 484; Smith *v.* Smith, 4 Rand. 95; Boyd *v.* Magruder, 2 Rob. (Va.) 761.

[3] Morse on Arb. and Award, 26. See, also, Palmer *v.* Davis, 28 N. Y. 242; McComb *v.* Turner, 14 Smed. & M. (Miss.) 119; Weston *v.* Stuart, 11 Me. 326; Miller *v.* Moore, 7 Serg. & R. (Pa.) 164; Taylor *v.* Smith, 93 Mich. 160, S. C. 52 N. W. R. 1118; Kyd on Awards, 46, 47.

[4] Hall *v.* Kimmer, 61 Mich. 269, S.

a good cause of action should exist[1] or that any suit should actually be pending between the parties.[2] It is sufficient that the claim or matter submitted to arbitration is in doubt and that it is or may become the subject of a controversy between the parties interested.[3] Within these limitations almost any claim or matter in dispute may be submitted to arbitration.[4] At one time controversies concerning real estate could not be submitted to arbitration, but even this exception no longer exists.[5]

C. 1 Am. St. R. 575; Wyatt *v.* Benson, 23 Barb. (N. Y.) 327; Harrington *v.* Brown, 9 Allen (Mass.), 579.

[1] Mayo *v.* Gardner, 4 Jones, 359; Findly *v.* Ray, 5 Jones, 125; O'Keson *v.* Barclay, 2 Penr. & W. 531; Dilks *v.* Hammond, 86 Ind. 563.

[2] Titus *v.* Scantling, 4 Blackf. (Ind.) 89; Brown *v.* Wheeler, 17 Conn. 345, S. C. 44 Am. Dec. 550; Robbins *v.* Clark, 129 Mass. 145; Lauman *v.* Young, 31 Pa. St. 306.

[3] Robbins *v.* Clark, 129 Mass. 145; Lauman *v.* Young, 31 Pa. St. 306; Findly *v.* Ray, 5 Jones, 125. But the matter should be in doubt. Garr *v.* Gomez, 9 Wend. (N. Y.) 649; Thayer *v.* Bacon, 3 Allen (Mass.), 163, S. C. 80 Am. Dec. 59; Cothran *v.* Knox, 13 S. Car. 496; Stose *v.* Heissler, 120 Ill. 433, S. C. 60 Am. R. 563; Atkinson *v.* Dailey, 107 Ind. 117; Hale *v.* Handy, 26 N. H. 206; Kelly *v.* Crawford, 5 Wall. (U. S.) 785.

[4] Davenport *v.* Fulkerson, 70 Mo. 417; Jones *v.* Binns, 27 Miss. 373; Richards *v.* Holt, 61 Ia. 529 (whether a place was a nuisance and should be abated); Cox *v.* Jagger, 2 Cow. (N. Y.) 638, S. C. 14 Am. Dec. 522 (dower claim); Stout *v.* Woodward, 71 N. Y. 90; Jones *v.* Boston Mill Corp., 65 Pick. (Mass.) 148; Page *v.* Foster, 7 N. H. 392 (questions as to boundary lines in last three preceding cases); Bowden *v.* Crow, 2 Texas Civil App. 591, S. C. 21 S. W. Rep. 612 (amount due for improving land); Enright *v.* Montauk Fire Ins. Co., 61 Hun (N. Y.), 625 (amount due on insurance policy); Fulmore *v.* McGeorge, 91 Cal. 611, S. C. 28 Pac. Rep. 92 (partnership matters and accounts); Fowler *v.* Jackson, 86 Ga. 337, S. C. 12 S. E. R. 811, and Fitch *v.* Constantine Hydraulic Co., 44 Mich. 74 (damages for overflowing land); McCracken *v.* Clark, 31 Pa. St. 498; Johnson *v.* Noble, 13 N. H. 286, S. C. 38 Am. Dec. 485 (question of law); Knoche *v.* Railroad Co., 34 Fed. R. 471; McBride *v.* Hagan, 1 Wend. (N. Y.) 326.

[5] Cox *v.* Jagger, 2 Cow. (N. Y.) 638, S. C. 14 Am. Dec. 522; Blair *v.* Wallace, 21 Cal. 317; Penniman *v.* Rodman, 13 Metc. (Mass.) 382; Munro *v.* Allaire, 2 Caines (N. Y.), 320; Shackelford *v.* Purket, 2 A. K. Marsh (Ky.), 435, S. C. 12 Am. Dec. 422; Davis *v.* Havard, 15 Serg. & R. (Pa.) 165, S. C. 16 Am. Dec. 537. See, however, as to oral agreement to arbitrate concerning real estate. Fort *v.* Allen, 110 N. Car. 183, S. C. 14 S. E. R. 685; Stark *v.* Cannady, 3 Litt. (Ky.) 399, S. C. 14 Am. Dec. 76. The title to land can not be determined by arbitration under the Michigan statute. Lang *v.* Salliotte, 7 L. R. A. 720.

§ 461. **Revocation of submission.**—A voluntary submission, not under a statute or rule of court, may be revoked by either party at any time before the award is made.[1] This, it seems, is true even where it is expressly stipulated in the agreement to submit to arbitration that it shall be irrevocable.[2] And where no final award had been rendered, it was held in a recent case that either party might revoke the submission, although an interlocutory determination as to some of the items submitted to the arbitrators had already been made.[3] But after notice of a final award it is too late to revoke the submission.[4] No particular form of revocation is necessary, but it must be absolute and unconditional.[5] It should conform to the submission and be of the same character, that is, if the submission is under seal or in writing the revocation should also be under seal or in writing, but if the submission is verbal the revocation may also be oral.[6] Notice of the revocation

[1] Jones *v.* Harris, 59 Miss. 214; Coleman *v.* Grubb, 23 Pa. St. 393; People *v.* Nash, 111 N. Y. 310, S. C. 7 Am. St. R. 747; Dilks *v.* Hammond, 86 Ind. 563; Seely *v.* Pelton, 63 Ill. 101; Davis *v.* Maxwell, 27 Ga. 368; Marsh *v.* Packer, 20 Vt. 198; Tyson *v.* Robinson, 3 Ired. (N. Car.) 333; Peters *v.* Craig, 6 Dana (Ky.), 307; Keyes *v.* Fulton, 42 Vt. 159. Compare McGeehen *v.* Duffield, 5 Pa. St. 497; Williams *v.* Danziger, 91 Pa. St. 232; Bank *v.* Widner, 11 Paige (N. Y.), 529, S. C. 43 Am. Dec. 768. Where several on one side make a joint submission it seems that the revocation must be by all. Robertson *v.* McNiel, 12 Wend. (N. Y.) 578; Brown *v.* Leavitt, 26 Me. 251; Greason *v.* Keteltas, 17 N. Y. 491.

[2] Tobey *v.* County of Bristol, 3 Story (U. S.), 800; Power *v.* Power, 7 Watts (Pa.), 205; Vynior's Case, 8 Coke, 162. That which is revocable in its nature can not be made irrevocable by an executory agreement. People *v.* Nash, 111 N. Y. 310, S. C. 7 Am. St. R. 747. But a submission forming part of an agreement containing other terms was held irrevocable in a recent case after such terms had been complied with and executed. McKenna *v.* Lyle, 155 Pa. St. 599, S. C. 26 Atl. R. 777. An agreement that if either party fails to appear the arbitration may proceed *ex parte* does not render the submission irrevocable. Boston, etc., Corp. *v.* Nashua, etc., Corp., 139 Mass. 463, S. C. 31 N. E. R. 751.

[3] Boston, etc., Corp. *v.* Nashua, etc., Corp., 139 Mass. 463, S. C. 31 N. E. R. 751.

[4] Coon *v.* Allen, 156 Mass. 113, S. C. 30 N. E. R. 83; Clement *v.* Hadlock, 13 N. H. 185; Marsh *v.* Packer, 20 Vt. 198; Tobey *v.* County of Bristol, 3 Story, 800.

[5] Goodwine *v.* Miller, 32 Ind. 419; Steere *v.* Brownell, 113 Ill. 415. It is sufficient, however, where a written revocation shows an intention to revoke. Frets *v.* Frets, 1 Cow. (N. Y.) 335.

[6] Shroyer *v.* Bash, 57 Ind. 349; McFarlane *v.* Cushman, 21 Wis. 401;

must be given to the arbitrators.[1] Even where there is no express revocation, it may be implied,[2] or the law itself may so operate as to revoke the submission.[3] Notwithstanding the fact that a voluntary submission is revocable, one who revokes it against the consent of the other party is liable in damages for breach of the contract.[4] Thus far we have been considering the revocation of voluntary submissions outside of court. A reference under a rule of court is irrevocable without the consent of the court,[5] and in many States a statutory submission is also irrevocable.[6]

§ 462. **Ratification of submission.**—An unauthorized submission may be ratified. Thus, where an agent enters into a

Evans *v.* Cheek, 3 Hayw. (Tenn.) 42; Relyea *v.* Ramsay, 2 Wend. (N. Y.) 602; Van Antwerp *v.* Stewart, 8 Johns. (N. Y.) 125; Sutton *v.* Tyrrell, 10 Vt. 91; Wallis *v.* Carpenter, 13 Allen (Mass.), 19.

[1] Allen *v.* Watson, 16 Johns. (N.Y.) 205; Brown *v.* Leavitt, 26 Me. 251; Buckwalter *v.* Russell, 119 Pa. St. 495.

[2] Peters *v.* Craig, 6 Dana (Ky.), 307; Rollins *v.* Townsend, 118 Mass. 224; Allen *v.* Galpin, 9 Barb. (N. Y.) 246; Kimball *v.* Gilman, 60 N. H. 54; Paulsen *v.* Manske, 24 Ill. App. 95. Compare Knaus *v.* Jenkins, 40 N. J. L. 288, S. C. 29 Am. R. 237; Bray *v.* English, 1 Conn. 498.

[3] Thus, death of one of the parties may revoke the submission. Marseilles *v.* Kenton, 17 Pa. St. 238; Dexter *v.* Young, 40 N. H. 130; Whitfield *v.* Whitfield, 8 Ired. L. (N. Car.) 163, S. C. 47 Am. Dec. 350; McIntire *v.* Morris, 14 Wend. (N. Y.) 90. And so may the death of an arbitrator. Sutton *v.* Tyrrell, 10 Vt. 91; Potter *v.* Sterrett, 24 Pa. St. 411. But death of a party or an arbitrator after the award will not operate as a revocation. Bash *v.* Christian, 77 Ind. 290; Cartledge *v.* Cutliff, 21 Ga. 1. Insanity of a party may operate as a revocation. Morse on Arb. and Award, 235. So may the marriage of a party who is a *feme sole*. Sutton *v.* Tyrrell, 10 Vt. 91; Abbott *v.* Keith, 11 Vt. 525; Bailey *v.* Stewart, 3 Watts. & S. (Pa.) 560, S. C. 39 Am. Dec. 50. Or the refusal of the arbitrator to act. Chapman *v.* Seccomb, 36 Me. 102; Brown *v.* Welcker, 1 Cold. 197; Wilson *v.* Cross, 7 Watts (Pa.), 495; Crofoot *v.* Allen, 2 Wend. (N. Y.) 494.

[4] Dexter *v.* Young, 40 N. H. 130; Blaisdell *v.* Blaisdell, 14 N. H. 78; Brown *v.* Leavitt, 26 Me. 251; Call *v.* Hagar, 69 Me. 521; Pond *v.* Harris, 113 Mass. 114; Hawley *v.* Hodge, 7 Vt. 237; Miller *v.* Junction Canal Co., 53 Barb. (N. Y.) 590.

[5] Haskell *v.* Whitney, 12 Mass. 47; Masterson *v.* Kidwell, 2 Cranch C. C. 669; Tyson *v.* Robinson, 3 Ired. L. (N. Car.) 333; Cumberland *v.* North Yarmouth, 4 Greenl. (Me.) 459; Bray *v.* English, 1 Conn. 498; Frets *v.* Frets, 1 Cow. (N. Y.) 335; Dexter *v.* Young, 40 N. H. 130.

[6] Shroyer *v.* Bash, 57 Ind. 349; Bash *v.* Christian, 84 Ind. 180; Bloomer *v.* Sherman, 5 Paige (N. Y.), 575; Montgomery Co. *v.* Carey, 1 Ohio St. 463.

submission without authority, the principal may bind himself by a subsequent ratification.[1] Appearing before the arbitrators and taking part in the proceedings without objection will amount to a ratification.[2] So, the acceptance of payment or other fruit of the award will amount to a ratification and estop the principal from denying that the submission was authorized.[3] But it has been held that the principal can not ratify an unauthorized submission, after an award in his favor, so as to enable him to enforce it against the other party, for to permit him to do so would give him the right to take all the chances of success without danger of loss in case of defeat by adopting the award if in his favor and repudiating it if adverse.[4]

§ 463. **Specific performance of agreement to submit.**—The general rule is well settled that specific performance of an agreement to submit to arbitration will not be enforced.[5] As already seen, the party refusing to carry out the agreement may be held liable for damages in an action at law as for breach of contract,[6] and this is usually the only remedy of the party aggrieved. There are, however, exceptional cases in which equity will afford relief.[7] Thus, where a lease provided that the lessee should have the privilege of erecting a house upon the leased land, and that, at the end of the term, the lessor should elect

[1] Detroit *v.* Jackson, 1 Doug. (Mich.) 106; Lowenstein *v.* McIntosh, 37 Barb. (N. Y.) 251; Isaacs *v.* Beth Hamedash Soc., 1 Hilt. 469; Smith *v.* Sweeny, 35 N. Y. 291.

[2] Memphis, etc., R. R. Co. *v.* Scruggs, 50 Miss. 284. See, also, Seely *v.* Pelton, 63 Ill. 101.

[3] Furber *v.* Chamberlain, 29 N. H. 405; Perry *v.* Mulligan, 58 Ga. 479.

[4] Eastman *v.* Burleigh, 2 N. H. 484.

[5] Greason *v.* Keteltas, 17 N. Y. 491; Noyes *v.* Marsh, 123 Mass. 286; St. Louis *v.* St. Louis Gas Co., 70 Mo. 69; King *v.* Howard, 27 Mo. 21; Copper *v.* Wells, 1 N. J. Eq. 10; Hopkins *v.* Gilman, 22 Wis. 476; Corbin *v.* Adams, 76 Va. 58; Tobey *v.* County of Bristol, 3 Story, 800; Milnes *v.* Gery, 14 Ves. Jr. 400; note to Kinney *v.* Baltimore, etc., Ass'n, 35 W. Va. 385, S. C. 15 L. R. A. 142.

[6] *Ante*, § 461. See, also, Livingston *v.* Ralli, 5 El. & Bl. 132; Haggart *v.* Morgan, 5 N. Y. 422, S. C. 55 Am. Dec. 350; Corbin *v.* Adams, 76 Va. 58; Oregon, etc., Bank *v.* American Mortg. Co., 35 Fed. R. 22.

[7] Tscheider *v.* Biddle, 4 Dill. 55; Orne *v.* Sullivan, 3 How. (Miss.) 161, S. C. 34 Am. Dec. 74; Black *v.* Rogers, 75 Mo. 441; Pomeroy Spec. Perform., §§ 148–152; Waterman Spec. Perform., § 44; Wood's Landlord and Tenant, 673.

to renew the lease, or buy the building, or sell the lot at a price to be fixed by disinterested appraisers, it was held that, the lessor having failed to elect, the lessee might elect to purchase the lot, and, upon the refusal of the lessor to join in the reference to fix the price, the lessee was entitled to equitable relief.[1]

§ 464. **Effect of agreement upon right to sue.**—A mere executory agreement to submit a controversy or matter in dispute to arbitration is not a bar to an action or suit in court.[2] A stipulation in an insurance policy or other contract to submit any controversy which may arise thereunder to arbitration will not oust the jurisdiction of the courts.[3] But a submission to arbitration, in order to determine the amount of the loss or the like, may be made a condition precedent to the institution

[1] Coles *v.* Peck, 96 Ind. 333. To the same effect, and similar in its facts, is the case of Tscheider *v.* Biddle, 4 Dill. 55.

[2] Laflin *v.* Railroad Co., 34 Fed. R. 859, and authorities cited in the following notes. The Pennsylvania doctrine, as will be seen from an examination of the case of Commercial Un., etc., Co. *v.* Hocking, 2 Am. St. R. 562, and other decisions there referred to, is peculiar.

[3] Kinney *v.* Baltimore, etc., Ass'n, 15 L. R. A. 142, and note; Hamilton *v.* Home Ins. Co., 137 U. S. 370, S. C. 11 Sup. Ct. R. 133; note to Boyd *v.* Vanderbilt Ins. Co., 5 Lewis' Am. R. R. & Corp. R. 6; The Excelsior, 123 U. S. 40; Robinson *v.* George's Ins. Co., 17 Me. 131, S. C. 35 Am. Dec. 239; Nurney *v.* Firemen's Ins. Co., 63 Mich. 633; Leach *v.* Republic Ins. Co., 58 N. H. 245; Louisville, etc., R. R. Co. *v.* Donnegan, 111 Ind. 179; Haggart *v.* Morgan, 5 N. Y. 422, S. C. 55 Am. Dec. 350; notes to Allegre *v.* Maryland Ins. Co., 14 Am. Dec. 296; Nettleton *v.* Gridley, 56 Am. Dec. 384, and Commercial Un. Assurance Co. *v.* Hocking, 2 Am. St. R. 562, 566, in all of which the authorities are collected and reviewed. So it is generally held that mutual benefit societies and the like can not make their own tribunals final judges of the claims of beneficiaries and thus prevent an appeal to the courts. Bauer *v.* Sampson Lodge, 102 Ind. 262; Supreme Council *v.* Forsinger, 125 Ind. 52, S. C. 21 Am. St. R. 196; Supreme Council *v.* Garrigus, 104 Ind. 133; Dolan *v.* Court of Good Samaritan, 128 Mass. 437; Whitney *v.* Nat. Masonic Acc. Ass'n (Minn.), 54 N. W. R. 184; Poultney *v.* Backman, 10 Abb. N. Cas. (N. Y.) 252; Stephenson *v.* Ins. Co., 54 Me. 70; Home Ins. Co. *v.* Morse, 20 Wall. (U. S.) 445. But compare Anacosta Tribe *v.* Murback, 13 Md. 91; Osceola Tribe *v.* Schmidt, 57 Md. 98; Fritz *v.* Muck, 62 How. Pr. (N. Y.) 70; Foram *v.* Howard Ben. Ass'n, 4 Pa. St. 519; Van Poucke *v.* Netherland, etc., Society (Mich.), 29 N. W. R. 863. A provision attempting to entirely oust the jurisdiction of the courts is said to be void. German Am. Ins. Co. *v.* Etherton, 25 Neb. 505; Wood *v.* Humphrey, 114 Mass. 185; Kistler *v.* Indianapolis, etc., R. R. Co., 88 Ind. 460.

of a suit, and where such is the case neither party can successfully maintain an action or suit until he has performed the condition on his part.[1] Such a provision may, however, be waived by the act of the party otherwise entitled to the benefit thereof.[2] And where an insurance policy provided for arbitration as to the amount of the loss and gave the company the right to take the property at the value fixed by the arbitrators, it was held that the assured, by revoking the submission, to which he had agreed, and selling the property, forfeited the policy.[3] As to the effects of the submission of a pending action or suit to arbitration, there is a sharp conflict among the authorities. By some it is held that a general submission operates as a discontinuance of the action, while in others the contrary is held. The authorities upon both sides of the question are collected and reviewed by Mr. Freeman, in a note to one of the leading cases, in the American Decisions.[4]

[1] Delaware, etc., Canal Co. *v.* Penna., etc., Coal Co., 50 N. Y. 250; Seward *v.* Rochester, 109 N. Y. 164; Hamilton *v.* Home Ins. Co., 137 U. S. 370; Hutchinson *v.* Liverpool, etc., Ass'n (Mass.), 10 L. R. A. 558; Holmes *v.* Ricket, 56 Cal. 307, S. C. 38 Am. R. 54; Birmingham, etc., Ins. Co. *v.* Pulver, 126 Ill. 329; Gere *v.* Council Bluffs Ins. Co., 67 Ia. 272; Chippewa Lumber Co. *v.* Phœnix Ins. Co., 80 Mich. 116; note to German Ins. Co. *v.* Gray, 2 Lewis' Am. R. R. & Corp. Cas. 459, 471; note to Kinney *v.* Baltimore, etc., Ass'n, 15 L. R. A. 142, 143; Hood *v.* Hartshorn, 100 Mass. 119, S. C. 1 Am. St. R. 89; Berry *v.* Carter, 19 Kan. 135; Avery *v.* Scott, 5 H. L. Cas. 811; Dawson *v.* Fitzgerald, L. R., 1 Ex. Div. 257, S. C. 3 Cent. L. Jour. 477; Babbage *v.* Coulbourn, L. R., 9 Q. B. Div. 235, 237, note. Many other authorities are collected and reviewed in the elaborate note to Commercial Un., etc., Co. *v.* Hocking, 2 Am. St. R. 562, 569. See, also, Lafond *v.* Deems, 81 N. Y. 508; Chamberlain *v.* Lincoln, 129 Mass. 70; Harrington *v.* Workingmen's Ben. Ass'n, 70 Ga. 340; McAlees *v.* Supreme Sitting (Pa.), 13 Atl. R. 755; Supreme Council *v.* Forsinger, 125 Ind. 52, S. C. 21 Am. St. R. 196.

[2] Farnum *v.* Phenix Ins. Co., 83 Cal. 246, S. C. 2 Lewis' Am. R. R. & Corp. R. 72; Bailey *v.* Ætna Ins. Co., 77 Wis. 336, S. C. 46 N. W. R. 440; Mentz *v.* Armenia Ins. Co., 79 Pa. St. 478, S. C. 21 Am. R. 80; Smith *v.* Alker, 102 N. Y. 87; Hutchinson *v.* Liverpool, etc., Ins. Co. (Mass.), 10 L. R. A. 558, and note.

[3] Morley *v.* Liverpool, etc., Ins. Co., 85 Mich. 210, S. C. 48 N. W. R. 502.

[4] Nettleton *v.* Gridley, 56 Am. Dec. 378, 381. See, also, Callinan *v.* Port Huron, etc., Ry. Co., 61 Mich. 15, S. C. 27 N. W. R. 718; Boyden *v.* Lamb, 152 Mass. 416, S. C. 25 N. E. R. 609; Draghicevich *v.* Vulicevich, 76 Cal. 378, S. C. 18 Pac. R. 406.

§ 465. Who may be arbitrators.—It has been said in general terms that any person may be an arbitrator, and that neither natural nor legal disabilities will necessarily disqualify him if he is chosen by the parties with full knowledge of his disability.[1] Arbitrators should, however, be disinterested and impartial. If the person chosen as arbitrator is personally interested in the matter in controversy, related to one of the parties, or prejudiced in his favor, and this is unknown to the other party, the latter may object to him as incompetent as soon as he discovers such fact.[2] The objection should be made at the earliest opportunity.[3] Parties may, if they choose, select an interested or prejudiced person or a relative,[4] and if, with knowledge of all the facts, a party fails to object at the proper time, he will be deemed to have waived all objections to the competency of the arbitrator.[5] A remote or trifling interest not likely to influence the arbitrator in any way will not disqualify him.[6]

[1] See Evans *v.* Ives, 15 Phila. (Pa.) 635; Galloway *v.* Webb, Hardin (Ky.), 318; Russell on Arb., 115; Morse on Arb. & Award, 99.

[2] Brown *v.* Leavitt, 26 Me. 251; Pool *v.* Hennessy, 39 Ia. 192, S. C. 18 Am. R. 44; Baltimore, etc., Co. *v.* Canton Co., 70 Md. 405, S. C. 17 Atl. R. 394; Rand *v.* Redington, 13 N. H. 72; Stephenson *v.* Oatman, 3 Lea (Tenn.), 462; Leonard *v.* Mulry, 93 N. Y. 392; Baird *v.* Mayor, 74 N. Y. 382; Connor *v.* Simpson, 104 Pa. St. 440, S. C. 7 Atl. R. 161 (partner); Spearman *v.* Wilson, 44 Ga. 473; Beattie *v.* Hilliard, 55 N. H. 428; Bowen *v.* Steere, 6 R. I. 251; Wheeling Gas Co. *v.* City of Wheeling, 5 W. Va. 448; *In re* Bliss, 39 Hun (N. Y.), 594; Bash *v.* Christian, 77 Ind. 290; *In re* Baring Brothers & Co., 61 L. J. Q. B. 704.

[3] Robb *v.* Brachman, 38 Ohio St. 423; Combs *v.* Wyckoff, 1 Caines (N. Y.), 147.

[4] Strong *v.* Strong, 9 Cush. (Mass.) 560; Howard *v.* Pensacola, etc., R. R. Co., 24 Fla. 560, S. C. 5 So. R. 356; Morgan *v.* Birnie, 9 Bing. 672; Johnston *v.* Cheape, 5 Dow P. C. 247; Williams *v.* Chicago, etc., R. R. Co., 112 Mo. 463, S. C. 20 S. W. R. 631; 2 Chitty's Gen. Pr. 83.

[5] Fox *v.* Hazelton, 10 Pick. (Mass.) 275; Bell *v.* Vernooy, 18 Hun (N.Y.), 125; Wheeling Gas Co. *v.* City of Wheeling, 5 W. Va. 448; Dougherty *v.* McWhorter, 7 Yerg. (Tenn.) 239; Monongahela, etc., Co. *v.* Fenlon, 4 Watts & S. (Pa.) 205; Davis *v.* Forshee, 34 Ala. 107; Perry *v.* Moore, 2 E. D. Smith (N. Y.), 32 (knowledge of attorney held knowledge of party).

[6] Fisher *v.* Towner, 14 Conn. 26; Wallis *v.* Carpenter, 13 Allen (Mass.), 19; Bullman *v.* North British, etc., Co., 159 Mass. 118, S. C. 34 N. E. R. 169; Leominster *v.* Fitchburg, etc., R. R. Co., 7 Allen (Mass.), 38; Goodrich *v.* Hulbert, 123 Mass. 190, S. C. 25 Am. R. 60; Cheney *v.* Martin, 127 Mass.

§ 466. **Arbitrators must act together.**—Unless it is otherwise provided all the arbitrators to whom a private controversy is submitted must act together.[1] No arbitrator has any authority to delegate his power and duty as such or appoint a substitute; he must act in person.[2] But merely ministerial duties may generally be delegated.[3] And the substitution of an arbitrator, in case one of those first chosen refuses to act, may be provided for in the submission.[4] The arbitrators should act together throughout all the proceedings, but if they all agree upon the final award the fact that they were not unanimous in their opinions upon every incidental question that arose prior to the award is immaterial.[5] If the award is silent as to whether they all met and acted together throughout the proceedings it will nevertheless be presumed that they did so.[6] An award by a majority may be provided for in the sub-

304; Kane *v.* Fond du Lac, 40 Wis. 495; Chicago, etc., R. R. Co. *v.* Hughes, 28 Mich. 186. But see Woodworth *v.* McGovern, 52 Vt. 318; Beddow *v.* Beddow, L. R., 9 Ch. Div. 89.

[1] Green *v.* Miller, 6 Johns. (N. Y.) 39, S. C. 5 Am. Dec. 184; Moore *v.* Ewing, Coxe (N. J.), 144, S. C. 1 Am. Dec. 195; Hoffman *v.* Hoffman, 26 N. J. L. 175; Patterson *v.* Leavitt, 4 Conn. 50, S. C. 10 Am. Dec. 98; Nettleton *v.* Gridley, 21 Conn. 531, S. C. 56 Am. Dec. 378; Vessel Owners', etc., Co. *v.* Taylor, 126 Ill. 250, S. C. 18 N. E. R. 663; Smith *v.* Smith, 28 Ill. 56; McCrary *v.* Harrison, 36 Ala. 577; Byard *v.* Harkrider, 108 Ind. 376; Jeffersonville, etc., Co. *v.* Mounts, 7 Ind. 669; Franklin, etc., Co. *v.* Pratt, 101 Mass. 359; Doherty *v.* Doherty, 148 Mass. 367, S. C. 19 N. E. R. 352; Hills *v.* Home Ins. Co., 129 Mass. 345; Leavitt *v.* Windsor Land, etc., Co., 54 Fed. R. 439; Godfrey *v.* Knodle, 44 Ill. App. 638; Oakley *v.* Anderson, 93 N. Car. 108; Kent *v.* French, 76 Ia. 187, S. C. 40 N. W. R. 713.

[2] Little *v.* Newton, 9 Dowl. P. C. 437; Kingston *v.* Kincaid, 1 Wash. (U. S.) 448; Tomlin *v.* Fordwich, 5 Ad. & E. 147; Lingood *v.* Eade, 2 Atk. 501. See, also, Brown *v.* Bellows, 4 Pick. (Mass.) 179.

[3] Thorp *v.* Cole, 2 C. M. & R. 367; Harvey *v.* Shelton, 7 Beav. 455; Moore *v.* Barnett, 17 Ind. 349.

[4] Binsse *v.* Wood, 37 N. Y. 526; Potter *v.* Sterrett, 24 Pa. St. 411 (choice to be made by parties).

[5] Bean *v.* Wendell, 22 N. H. 582; Campbell *v.* Western, 3 Paige (N. Y.), 124; Jackson *v.* Gager, 5 Cow. (N. Y.) 383.

[6] Yates *v.* Russell, 17 Johns. (N. Y.) 461; Maynard *v.* Frederick, 7 Cush. (Mass.) 247; Ackley *v.* Finch, 7 Cow. (N. Y.) 290. Compare Blin *v.* Hay, 2 Tyler (Vt.), 304, S. C. 4 Am. Dec. 738.

mission or by statute,[1] and it is generally held that in matters of public concern such an award is sufficient.[2]

§ 467. **Procedure.**—At common law it is not necessary that the arbitrators should be sworn;[3] but in many of the States this is required by statute. In some of them it is compulsory,[4] in others it may be waived by the parties.[5] Each party is entitled to be present at the hearing,[6] and he should, therefore, be given reasonable notice of the time and place,[7] but notice

[1] Spencer *v.* Curtis, 57 Ind. 221, 231; Buxton *v.* Howard, 38 Ind. 109; Stiringer *v.* Toy, 33 W. Va. 86, S. C. 10 S. E. R. 26; Gas Co. *v.* Wheeling, 8 W. Va. 320. Even in such a case, however, it seems that they must meet and consult or act together. Moore *v.* Ewing, Coxe (N. J.), 144, S. C. 1 Am. Dec. 195 and note; Henderson *v.* Buckley, 14 B. Mon. (Ky.) 292; Tuscaloosa Bridge Co. *v.* Jemison, 33 Ala. 476; Plews *v.* Middleton, 6 Q. B. 845; Battey *v.* Button, 13 Johns. (N. Y.) 187.

[2] Grindley *v.* Barker, 1 Bos. & P. 229; King *v.* Beeston, 3 T. R. 592; Patterson *v.* Leavitt, 4 Conn. 50, S. C. 10 Am. Dec. 98; Co. Litt., 181*b*. All, however, should meet and consult or act together. People *v.* Coghill, 47 Cal. 361; Lee *v.* Parry, 4 Denio (N. Y.), 125; Keeler *v.* Frost, 22 Barb. (N. Y.) 400; Crocker *v.* Crane, 21 Wend. (N. Y.) 211; People *v.* Batchelor, 22 N. Y. 128. But where a majority have authority to make the award, and one, after due notice, fails or refuses to attend or take part, the majority may proceed without him. Crofoot *v.* Allen, 2 Wend. (N. Y.) 494; Bulson *v.* Lohnes, 29 N. Y. 291; Dodge *v.* Brennan, 59 N. H. 138; Cumberland *v.* North Yarmouth, 4 Greenl. (Me.) 459; Short *v.* Pratt, 6 Mass. 496; Carpenter *v.* Wood, 1 Metc. (Mass.) 409.

[3] Bradstreet *v.* Erskine, 50 Me. 407; Daggy *v.* Cronnelly, 20 Ind. 474; Dickerson *v.* Hays, 4 Blackf. (Ind.) 44; Howard *v.* Sexton, 4 N. Y. 157; Payne *v.* Crawford (Ala.), 10 So. R. 911. See, also, Ogden *v.* Forney, 33 Iowa, 205.

[4] Inslee *v.* Flagg, 26 N. J. L. 368, S. C. 69 Am. Dec. 580; Ford *v.* Potts, 6 N. J. L. 388; Overton *v.* Alpha, 13 La. Ann. 558; Walt *v.* Huse, 38 Mo. 210; French *v.* Moseley, 1 Litt. (Ky.) 247; Deputy *v.* Betts, 4 Harr. (Del.) 352; Hepburn *v.* Jones, 4 Colo. 98; Tomlinson *v.* Hammond, 8 Iowa, 40.

[5] Newcomb *v.* Wood, 97 U. S. 581; Browning *v.* Wheeler, 24 Wend. (N. Y.) 258, S. C. 35 Am. Dec. 617; Day *v.* Hammond, 57 N. Y. 479, S. C. 15 Am. R. 522; Tucker *v.* Allen, 47 Mo. 488; Hill *v.* Taylor, 15 Wis. 190; Milwaukee County Supervisors *v.* Ehlers, 45 Wis. 281; Woodrow *v.* O'Conner, 28 Vt. 776.

[6] Hollingsworth *v.* Leiper, 1 Dall. (U. S.) 161; Tate *v.* Vance, 27 Gratt. (Va.) 571; Cleland *v.* Hedly, 5 R. I. 163; Conrad *v.* Massasoit Ins. Co., 4 Allen (Mass.) 20; Semple *v.* Goehringer (Minn.), 54 N. W. R. 481; Alexander *v.* Cunningham, 111 Ill. 511; Graham *v.* Woodall, 86 Ala. 313, S. C. 5 So. R. 687.

[7] Lutz *v.* Linthicum, 8 Pet. (U. S.) 165; Passmore *v.* Pettit, 4 Dall. (U. S.) 271; Hagner *v.* Musgrove, 1 Dall. (U. S.) 83; Linde *v.* Republic, etc., Co., 18 J. & S. (N. Y.) 362; Elmendorf *v.*

may be waived by either party,[1] and if he does not attend after reasonable notice, the arbitrators may proceed with the hearing in his absence.[2] The manner of conducting the hearing is largely in the discretion of the arbitrators.[3] Evidence should be heard and witnesses examined in the presence of the parties.[4] But the arbitrators, where the submission is general, are judges of both the law and the facts[5] and may decide according to what they believe to be right and just, without strictly following all the technical rules of law.[6] They must not, however,

Harris, 23 Wend. (N. Y.) 628, S. C. 35 Am. Dec. 587; Curtis *v.* Sacramento, 64 Cal. 102; Young *v.* Reynolds, 4 Md. 375; McKinney *v.* Page, 32 Me. 513; Dreyfous *v.* Hart, 36 La. Ann. 929; Goodall *v.* Cooley, 29 N. H. 48; Dormsy *v.* Knower, 55 Iowa, 722; Billings *v.* Billings, 110 Mass. 225; Wood *v.* Helme, 14 R. I. 325; Warren *v.* Tinsley, 53 Fed. R. 689. But notice, after a hearing, of the meeting to formulate the award or to perform merely ministerial acts is unnecessary. Zell *v.* Johnston, 76 N. Car. 302; Roloson *v.* Carson, 8 Md. 208; Straw *v.* Truesdale, 59 N. H. 109; James *v.* Schroeder, 61 Mich. 28, S. C. 27 N. W. R. 850.

[1] Pike *v.* Stallings, 71 Ga. 860; Kane *v.* Fond du Lac, 40 Wis. 495; Dickerson *v.* Hays, 4 Blackf. (Ind.) 44; Hubbard *v.* Hubbard, 61 Ill. 228; Duckworth *v.* Diggles, 139 Mass. 51; Shockey *v.* Glasford, 6 Dana (Ky.), 9; Whitlock *v.* Ledford, 82 Ky. 390; Weberly *v.* Matthews, 91 N. Y. 648; Graham *v.* Graham, 9 Pa. St. 254, S. C. 49 Am. Dec. 557. So, proceeding with a hearing before two arbitrators, without objection, is a waiver of the right under the submission to have a third arbitrator called in. Badders *v.* Davis, 88 Ala. 367, S. C. 6 So. R. 834.

[2] Brown *v.* Leavitt, 26 Me. 251; Bray *v.* English, 1 Conn. 498; Scott *v.* Van Sandau, 6 Q. B. 237.

[3] Morse on Arb. and Award, 115; Bray *v.* English, 1 Conn. 498; Tillam *v.* Copp, 5 C. B. 211; Blodgett *v.* Prince, 109 Mass. 44; Sizer *v.* Burt, 4 Denio (N. Y.), 426; Williams *v.* Hayes, 20 N. Y. 58; Sweeney *v.* Vaudry, 2 Mo. App. 352.

[4] Hollingsworth *v.* Leiper, 1 Dall. (U. S.) 161; Peters *v.* Newkirk, 6 Cow. (N. Y.) 103; Halstead *v.* Seaman, 82 N. Y. 27; Shipman *v.* Fletcher, 82 Va. 601; Hart *v.* Kennedy, 47 N. J. Eq. 51, S. C. 20 Atl. R. 29; Milner *v.* Noel, 43 Ind. 324; Braddick *v.* Thompson, 8 East, 344; Phipps *v.* Ingram, 3 Dowl. 669; Cameron *v.* Castleberry, 29 Ga. 495; Emery *v.* Owings, 7 Gill. (Md.) 488, S. C. 48 Am. Dec. 580.

[5] Johnson *v.* Noble, 13 N. H. 286, S. C. 38 Am. Dec. 485; Memphis, etc., R. R. Co. *v.* Scruggs, 50 Miss. 284; Fudichar *v.* Guardian, etc., Co., 62 N. Y. 392; Price *v.* Brown, 98 N. Y. 388; Maynard *v.* Frederick, 7 Cush. (Mass.) 247; Spear *v.* Stacy, 26 Vt. 61; Kirten *v.* Spears, 44 Ark. 166; Burchell *v.* Marsh, 17 How. (U. S.) 344.

[6] Cobb *v.* Dolphin Mfg. Co., 108 N. Y. 463; Campbell *v.* Western, 3 Paige (N. Y.) 124; Robbins *v.* Killebrew, 95 N. Car. 19; Maynard *v.* Frederick, 7 Cush. (Mass.) 247; Greenough *v.* Rolfe, 4 N. H. 357; Hazeltine *v.* Smith, 3 Vt. 535; Jocelyn *v.* Donnel, Peck, 274, S. C. 14 Am. Dec. 753; Hooper *v.* Tay-

exceed their authority, which is to be determined from the statute, rule of court, or submission under which they act.[1]

§ 468. The award.—Where no particular form is required by the submission or by statute, no technical expressions or introductory recitals are necessary, and any form of words amounting to a decision of the questions submitted will constitute a good award so far as the form is concerned.[2] Unless a written award is required by the submission or by statute, a verbal award will suffice,[3] except where it affects the title to real estate.[4] So, in the absence of such a requirement, it need not be under seal,[5] nor witnessed.[6] But where the submission

lor, 39 Me. 224; Fennimore *v.* Childs, 1 Halst. (N. J. L.) 386; Ruckman *v.* Ransom, 23 N. J. Eq. 118; Bassett *v.* Cunningham, 9 Gratt. (Va.) 684; Edrington *v.* League, 1 Texas, 64; Brush *v.* Fisher, 70 Mich. 469, S. C. 14 Am. St. R. 510.

[1] Cook *v.* Carpenter, 34 Vt. 121, S. C. 80 Am. Dec. 670, and note; Richardson *v.* Huggins, 23 N. H. 106; Mayor *v.* Butler, 1 Barb. (N. Y.) 325; Butler *v.* Mayor, 7 Hill (N. Y.), 329; Blakely *v.* Frazier, 11 S. Car. 122; Palmer *v.* Van Wyck (Tenn.), 21 S. W. R. 761; Garrow *v.* Nicolai (Ore.), 32 Pac. R. 1036; Herbst *v.* Hagenaers, 137 N. Y. 290, S. C. 33 N. E. R. 315; Luther *v.* Medbury (R. I.), 26 Atl. R. 37; King, etc., Co. *v.* City of St. Louis, 43 Fed. R. 768, S. C. 10 L. R. A. 826; Leslie *v.* Leslie (N. J.), 24 Atl. R. 319; Joplin *v.* Postlethwaite, 61 L. T. R. 629.

[2] Ott *v.* Schroeppel, 5 N. Y. 482; Platt *v.* Smith, 14 Johns. (N. Y.) 368; Caldwell *v.* Dickinson, 13 Gray (Mass.), 365; Miller *v.* Goodwine, 29 Ind. 46; Gulley *v.* Macy, 89 N. Car. 343; Myers *v.* York, etc., R. R. Co., 2 Curt. (U. S. C. C.) 28; Rogers *v.* Tatum, 25 N. J. L. 281; Hanson *v.* Webber, 40 Me. 194; Lamphire *v.* Cowan, 39 Vt. 420; Lock *v.* Vulliamy, 5 B. & Ad. 600; Matson *v.* Trower, Ryan & M. 17; Smith *v.* Hartley, 10 Com. B. 800; Upshaw *v.* Hargrove, 14 Miss. 286; Rigden *v.* Martin, 6 Har. & J. (Md.) 403; Rixford *v.* Nye, 20 Vt. 132; Houghton *v.* Burroughs, 18 N. H. 499; Davies *v.* Pratt, 17 Com. B. 183; Clanton *v.* Price, 90 N. Car. 96; Payne *v.* Crawford, 11 So. R. 725; Vaughan *v.* Smith, 69 Ala. 92; Negley *v.* Stewart, 10 Serg. & R. (Pa.) 207; Knight *v.* Holden, 104 N. Car. 107, S. C. 10 S. E. R. 90; George *v.* Lousley, 8 East, 13.

[3] Gay *v.* Waltman, 89 Pa. St. 453; Marsh *v.* Packer, 20 Vt. 198; Goodell *v.* Raymond, 27 Vt. 241; Valentine *v.* Valentine, 2 Barb. Ch. (N. Y.) 430; Phelps *v.* Dolan, 75 Ill. 90; Sawyer *v.* Fellows, 6 N. H. 107, S. C. 25 Am. Dec. 452; White *v.* Fox, 29 Conn. 570; Shelton *v.* Alcox, 11 Conn. 240; Kelley *v.* Adams, 120 Ind. 340, S. C. 22 N. E. R. 317.

[4] Philbrick *v.* Preble, 18 Me. 255, S. C. 36 Am. Dec. 718, and note; Jones *v.* Dewey, 17 N. H. 596; Byam *v.* Robbins, 6 Allen (Mass.), 63; Buker *v.* Bowden, 83 Me. 67, S. C. 21 Atl. R. 748.

[5] McAdams *v.* Stilwell, 13 Pa. St. 90; Owen *v.* Boerum, 23 Barb. (N.Y.) 187.

[6] Hedrick *v.* Judy, 23 Ind. 548; Carson *v.* Earlywine, 14 Ind. 256; Valle *v.* Railroad Co., 37 Mo. 445.

requires that the award be under seal,[1] or in writing,[2] the failure to comply with such requirement will vitiate the award. It should, however, be co-extensive with the submission and dispose of the entire subject-matter submitted.[3] It should also be final,[4] possible[5] and at least reasonably certain;[6] but it need not pass upon each of several matters submitted separately,[7] unless either expressly or impliedly required by the submission.[8] Finally, the award should be mutual,[9] but the meaning of this requirement is simply that "the award must be so constructed as not to leave him who is to pay liable to be sued for

[1] Price *v.* Thomas, 4 Md. 514; Rea *v.* Gibbons, 7 Serg. & R. (Pa.) 204; Stanton *v.* Henry, 11 Johns. (N. Y.) 133. Compare Mathews *v.* Miller, 25 W. Va. 817.

[2] Tudor *v.* Scovell, 20 N. H. 174; State *v.* Gurnee, 14 Kan. 111.

[3] Bean *v.* Bean, 25 W.Va. 604; Hamilton *v.* Hart, 125 Pa. St. 142; S. C. 17 Atl. R. 226; Jones *v.* Welwood, 71 N. Y. 208; Jackson *v.* Ambler, 14 Johns. (N. Y.) 96; Boston, etc., R. R. Co. *v.* Nashua, etc., R. R. Co., 139 Mass. 463; Edwards *v.* Stevens, 3 Allen (Mass.), 315; McGregor, etc., R. R. Co. *v.* Sioux City, etc., R. R. Co., 49 Iowa, 604; Dogge *v.* Northwestern, etc., Co., 49 Wis. 501; Porter *v.* Scott, 7 Cal. 312; Carnochan *v.* Christie, 11 Wheat. (U. S.) 446; Waller *v.* Shannon, 44 Conn. 480; Varney *v.* Brewster, 14 N. H. 49; Gooch *v.* McKnight, 10 Humph. (Tenn.) 229; Scott *v.* Barnes, 7 Pa. St. 134. Compare Pearce *v.* McIntyre, 29 Mo. 423; Lynch *v.* Nugent, 80 Ia. 422, S. C. 46 N. W. R. 61; Moore *v.* Gherkin, Busb. L. (N.Car.) 73; Smith *v.* Demarest, 8 N. J. L. 195; McCullough *v.* McCullough, 12 Ind. 487.

[4] Colcord *v.* Fletcher, 50 Me. 398; Waite *v.* Barry, 12 Wend. (N.Y.) 377; Lincoln *v.* Whittenton Mills, 12 Mete. (Mass.) 31; McKeen *v.* Oliphant, 18 N. J. L. 442; Patton *v.* Baird, 7 Ired. Eq. (N. Car.) 255; Coghill *v.* Hord, 1 Dana (Ky.), 350, S. C. 25 Am. Dec. 148; Byars *v.* Thompson, 12 Leigh (Va.), 550, S. C. 37 Am. Dec. 680.

[5] Martin *v.* Williams, 13 Johns. (N. Y.) 264; Yeamans *v.* Yeamans, 99 Mass. 585; Curd *v.* Wallace, 7 Dana (Ky.), 190, S. C. 32 Am. Dec. 85; Thirsley *v.* Helbot, 3 Mod. 272; Adams *v.* Staley, 2 Show. 61.

[6] Banks *v.* Adams, 23 Me. 259; Entnier *v.* Shope, 43 Pa. St. 110; Parker *v.* Eggleston, 5 Blackf. (Ind.) 128; Whitcher *v.* Whitcher, 49 N. H. 176, S. C. 6 Am. R. 486; Alfred *v.* Kankakee, etc., R. R. Co., 92 Ill. 609; Lyle *v.* Rodgers, 5 Wheat. (U. S.) 394; Crawford *v.* Orr, 84 N. Car. 246; Schuyler *v.* Van Der Veer, 2 Caines (N. Y.), 235; Ingraham *v.* Whitmore, 75 Ill. 24; Harris *v.* Social Mfg. Co., 9 R. I. 99, S. C. 11 Am. R. 224.

[7] Lamphire *v.* Cowan, 39 Vt. 420; Sides *v.* Brendlinger, 14 Neb. 491; Strong *v.* Strong, 9 Cush. (Mass.) 560; Blackwell *v.* Goss, 116 Mass. 394; Stearns *v.* Cope, 109 Ill. 340; Vannah *v.* Carney, 69 Me. 221.

[8] Houston *v.* Pollard, 9 Mete. (Mass.) 164.

[9] Matter of Williams, 4 Denio (N. Y.), 194; Furbish *v.* Hall, 8 Me. 315; Onion *v.* Robinson, 15 Vt. 510; Miller *v.* Moore, 7 Serg. & R. (Pa.) 164.

the same cause."[1] In other words, "this mutuality is nothing more than that the thing awarded to be done should be a final discharge of all future claim by the party in whose favor the award is made against the other for the causes submitted."[2] Awards are liberally construed and will be given effect by the courts, when consistent with legal principles, in accordance with the intent of the arbitrators.[3] All reasonable presumptions will be indulged in their favor.[4] When the submission or the statute requires the award to be delivered or published actual delivery or publication is essential to render it effective;[5] but, in the absence of such a provision, delivery is unnecessary.[6]

[1] Blackledge *v.* Simpson, 2 Hayw. (N. Car.) 30, S. C. 2 Am. Dec. 614.

[2] Munro *v.* Alaire, 2 Caines (N. Y.), 320. See, also, Hanson *v.* Webber, 40 Me. 194; Cox *v.* Jagger, 2 Cow. (N. Y.) 638, S. C. 14 Am. Dec. 522; Borrets *v.* Patterson, Taylor (N. Car.), 37, S. C. 1 Am. Dec. 576; McKeen *v.* Oliphant, 18 N. J. L. 442; Gibson *v.* Powell, 13 Miss. 712; Karthaus *v.* Ferrer, 1 Pet. (U. S.) 222.

[3] Kendall *v.* Bates, 35 Me. 357; Hanson *v.* Webber, 40 Me. 194; Grier *v.* Grier, 1 Dall. (U. S.) 173; Rogers *v.* Carrothers, 26 W.Va. 238; Sheffield *v.* Clark, 73 Ga. 92; Archer *v.* Williamson, 2 Har. & G. (Md.) 62; Jackson *v.* Ambler, 14 Johns. (N. Y.) 96; Ross *v.* Watt, 16 Ill. 99; Richardson *v.* Huggins, 23 N. H. 106; Burns *v.* Hendrix, 54 Ala. 78; Spear *v.* Hooper, 22 Pick. (Mass.) 144; Skillings *v.* Coolidge, 14 Mass. 43; Robbins *v.* Killebrew, 95 N. Car. 19.

[4] Merritt *v.* Merritt, 11 Ill. 565; McMillan *v.* James, 105 Ill. 194; Strong *v.* Strong, 9 Cush. (Mass.) 560; Karthaus *v.* Ferrer, 1 Pet. (U. S.) 222; Phipps *v.* Tompkins, 50 Ga. 641; Young *v.* Kinney, 48 Vt. 22; Pollock *v.* Sutherlin, 25 Gratt. (Va.) 78; Liverpool, etc., Co. *v.* Goehring, 99 Pa. St. 13; Warner *v.* Collins, 135 Mass. 26; McDowell *v.* Thomas, 4 Neb. 542; Wood *v.* Treleven, 74 Wis. 577, S. C. 43 N. W. R. 488; New York, etc., Co. *v.* Schnieder, 119 N. Y. 475, S. C. 24 N. E. R. 4; Leslie *v.* Leslie (N. J.), 24 Atl. R. 319; Call *v.* Ballard, 65 Wis. 187; Neib *v.* Hinderer, 42 Mich. 451; Smith *v.* Minor, 1 N. J. L. 16; Green *v.* Ford, 17 Ark. 586.

[5] Parsons *v.* Aldrich, 6 N. H. 264; Denman *v.* Bayless, 22 Ill. 300; Sellick *v.* Adams, 15 Johns. (N. Y.) 197; Gidley *v.* Gidley, 65 N. Y. 169; Kingsley *v.* Bill, 9 Mass. 198; Buck *v.* Wadsworth, 1 Hill (N. Y.), 321. Publication, in this connection, simply means notice to the parties. Knowlton *v.* Homer, 30 Me. 552; Pancoast *v.* Curtis, 6 N. J. L. 415; Jones *v.* Dewey, 17 N. H. 596; Francis *v.* Ames, 14 Ind. 251; Rundell *v.* La Fleur, 6 Allen (Mass.), 480. But see, under the Wisconsin statute, Russell *v.* Clark, 60 Wis. 284.

[6] Crawford *v.* Orr, 84 N. Car. 246; Rundell *v.* La Fleur, 6 Allen (Mass.), 480; Owen *v.* Boerum, 23 Barb. (N. Y.) 187; Willard *v.* Bickford, 39 N. H. 536; Houghton *v.* Burroughs, 18 N. H. 499. And it may be waived. Coulter *v.* Coulter, 81 Ind. 542; Perkins *v.* Wing, 10 Johns. (N. Y.) 143; Marsh *v.* Curtis, 71 Ind. 377.

"In legal contemplation the award takes effect when ready for delivery and the parties have been notified to that effect. That the arbitrators may hold it as security for the payment of their charges, etc., unless the agreement stipulates to the contrary, does not at all affect the force or effect of their award."[1]

§ 469. **Effect of award.**—A valid award is a bar to any action upon the demands or claims therein determined,[2] and in some States no action can be maintained upon any matter within the scope of the submission, although not passed upon by the arbitrators.[3] It has the effect of a judgment, in which the original claim is merged, but it may contain a condition requiring the performance of certain acts before it can be made available.[4] And if the award is void or fails it will not extinguish the original cause of action.[5] An unconditional award of chattels vests the property immediately in the party

[1] *Per* Gray, J., in New York, etc., Co. *v.* Schnieder, 119 N. Y. 475. See, also, Ott *v.* Schroeppel, 3 Barb. (N. Y.) 56.

[2] Morse *v.* Bishop, 55 Vt. 231; Girdler *v.* Carter, 47 N. H. 305; Ford *v.* Burleigh, 60 N. H. 278; Coleman *v.* Wade, 6 N. Y. 44; Wiberly *v.* Matthews, 91 N. Y. 648; Groat *v.* Pracht, 31 Kan. 656; Curley *v.* Dean, 4 Conn. 259, S. C. 10 Am. Dec. 140; Hadaway *v.* Kelly, 78 Ill. 286; Rogers *v.* Holden, 13 Ill. 293; Handy *v.* Cobb, 44 Miss. 699; Anding *v.* Levy, 60 Miss. 487; Leonard *v.* Wading, etc., Co., 113 Mass. 235; Cook *v.* Gardner, 130 Mass. 313; Speer *v.* McChesney, 2 Watts & S. (Pa.) 233; Day *v.* Bonnin, 3 Bing. (N. C.) 219; Terre Haute, etc., R. R. Co. *v.* Harris, 126 Ind. 7, S. C. 25 N. E. R. 831; Baltes *v.* Bass Foundry, etc., 129 Ind. 185, S. C. 28 N. E. R. 319. Compare Garrow *v.* Nicolai (Ore.), 32 Pac. R. 1036; Keeler *v.* Harding, 23 Ark. 697; Howett *v.* Monical, 25 Ill. 122.

[3] Wheeler *v.* Van Houten, 12 Johns. (N.Y.) 311; Brazill *v.* Isham, 12 N. Y. 9; Stipp *v.* Washington Hall Co., 5 Blackf.(Ind.) 473; Robinson *v.* Morse, 26 Vt. 392; Shackelford *v.* Purket, 2 A. K. Marsh. (Ky.) 435, S. C. 12 Am. Dec. 432; Seely *v.* Pelton, 63 Ill. 101; McJimsey *v.* Traverse, 1 Stew. (Ala.) 244, S. C. 18 Am. Dec. 43. *Contra*, Webster *v.* Lee, 5 Mass. 334; King *v.* Savory, 8 Cush. (Mass.) 312; Mt. Desert *v.* Tremont, 75 Me. 252; Whittemore *v.* Whittemore, 2 N. H. 26; Hopson *v.* Doolittle, 13 Conn. 236; Keaton *v.* Mulligan, 43 Ga. 308; Lee *v.* Dolan, 39 N. J. Eq. 193; Hewitt *v.* Furman, 16 Serg. & R. (Pa.) 135.

[4] Commonwealth *v.* Pejepscut Proprietors, 7 Mass. 399.

[5] Mayor *v.* Butler, 1 Barb. (N. Y.) 325; Haggart *v.* Morgan, 5 N. Y. 422, S. C. 55 Am. Dec. 350; Sartwell *v.* Horton, 28 Vt. 370; Logsdon *v.* Roberts, 3 T. B. Mon. (Ky.) 255; Canfield *v.* Watertown Ins. Co., 55 Wis. 419; Smith *v.* Holcomb, 99 Mass. 552.

to whom they are awarded,[1] but an award of land simply operates as an estoppel and does not vest the title without a conveyance.[2] An award, ordinarily, has no effect as against strangers,[3] but one who is not directly a party to the submission may, by his acts, or agreement, become bound by the award.[4]

§ 470. **Enforcement of award.**—A valid award may be enforced by an action at law,[5] or, if no adequate remedy at law exists, equity will compel its specific performance.[6] But if certain acts are required by the award to be done by one party as a condition precedent, or the like, he must show that he has performed or offered to perform them before he can maintain a suit upon the award.[7] When the submission is made under a rule of court, or, in many jurisdictions, under the statute, judgment is usually entered upon the award much in the same

[1] Girdler *v.* Carter, 47 N. H. 305. But an award fixing the amount of a claim secured by chattel mortgage does not of itself divest the legal title to the mortgaged property. Collier *v.* White (Ala.), 12 So. R. 385. See, also, Gray *v.* Reed, 65 Vt. 178, S. C. 26 Atl. R. 526.

[2] Jackson *v.* Gager, 5 Cow. (N. Y.) 383; Shepard *v.* Ryers, 15 Johns. (N. Y.) 497; Shelton *v.* Alcox, 11 Conn. 240; Gray *v.* Berry, 9 N. H. 473; Goodridge *v.* Dustin, 5 Metc. (Mass.) 363; Doe *v.* Rosser, 3 East, 15; Hunter *v.* Rice, 15 East, 100.

[3] Woody *v.* Pickard, 8 Blackf. (Ind.) 55; Martin *v.* Williams, 13 Johns. (N. Y.) 264; Collins *v.* Freas, 77 Pa. St. 493; Dale *v.* Mottram, 2 Barn. 291.

[4] Humphreys *v.* Gardner, 11 Johns. (N. Y.) 61; George *v.* Johnson, 45 N. H. 456; Macon *v.* Crump, 1 Call, 575; Schultz *v.* Lempert, 55 Texas, 273; Sears *v.* Vincent, 8 Allen (Mass.), 507.

[5] Dickerson *v.* Tyner, 4 Blackf. (Ind.) 253; Scearce *v.* Scearce, 7 Ind. 286; Stevens *v.* Record, 56 Me. 488; Burnside *v.* Whitney, 24 Barb. (N. Y.) 632, S. C. 21 N. Y. 148; Rank *v.* Hill, 2 Watts & S. (Pa.) 56, S. C. 37 Am. Dec. 483; Bayne *v.* Morris, 1 Wall. (U. S.) 97; Bates *v.* Curtis, 21 Pick. (Mass.) 247; Blanchard *v.* Murray, 15 Vt. 548; Webb *v.* Zeller, 70 Ind. 408.

[6] Jones *v.* Boston Mill Corporation, 4 Pick. 507, S. C. 16 Am. Dec. 358; Davis *v.* Havard, 15 Serg. & R. (Pa.) 165, S. C. 16 Am. Dec. 537; Brown *v.* Burkenmeyer, 9 Dana (Ky.), 159, S. C. 33 Am. Dec. 541; McNeil *v.* Magee, 5 Mason (U. S.), 244; Whitney *v.* Stone, 23 Cal. 275; Maury *v.* Post, 55 Hun (N. Y.), 454; Kirksey *v.* Fike, 27 Ala. 383, S. C. 62 Am. Dec. 768; Blackett *v.* Bates, L. R., 1 Ch. App. 117; Norton *v.* Mascall, 2 Vern. 24.

[7] Jesse *v.* Cater, 28 Ala. 475; Huy *v.* Brown, 12 Wend. (N. Y.) 591; Shearer *v.* Handy, 22 Pick. (Mass.) 417; Hugg *v.* Collins, 18 N. J. L. 294; Leitch *v.* Beaty, 23 Ill. 642; Lincoln *v.* Cook, 3 Ill. 61; Smith *v.* Stewart, 5 Ind. 220; Hoffman *v.* Hoffman, 26 N. J. L. 175.

manner as upon the verdict of a jury,[1] although a rule to show cause why judgment should not be rendered thereon is generally required to be taken and served upon the other party before the rendition of the judgment.[2]

§ 471. **Impeaching and setting aside the award.**—It is said that the power of the court to set aside an award or to enter judgment thereon is, in many respects, analogous to the power exercised by the court in granting or refusing a new trial after verdict.[3] But, as a general rule, mere error in judgment, where the arbitrators act in good faith and there is neither fraud nor misconduct, will not be a sufficient cause for setting aside the award.[4] And where the award recites that the arbitrators have disposed of all the matters embraced in the submission, in accordance therewith, it seems that parol evidence of one of the arbitrators is not admissible to impeach the award and its recitals.[5] It is, indeed, a general rule, subject to few exceptions,[6] that an arbitrator can not impeach his own award,[7]

[1] Merritt *v.* Thompson, 27 N. Y. 225; Crook *v.* Chambers, 40 Ala. 239; Whitis *v.* Culver, 25 Ia. 30; Sargent *v.* Hampden, 32 Me. 78; Schriver *v.* State, 9 Gill & J. (Md.) 1; Duer *v.* Boyd, 1 Serg. & R. (Pa.) 203; Thorpe *v.* Starr, 17 Ill. 199; Carsley *v.* Lindsay, 14 Cal. 390.

[2] Healy *v.* Isaacs, 73 Ind. 226; Shroyer *v.* Bash, 57 Ind. 349; Anderson *v.* Anderson, 65 Ind. 196. See, also, Shores *v.* Bowen, 44 Mo. 396. But, compare Kelly *v.* Morse, 3 Neb. 224.

[3] Buckwalter *v.* Russell, 119 Pa. St. 495.

[4] Hall *v.* Norwalk, etc., Co., 57 Conn. 105; Brush *v.* Fisher, 70 Mich. 469, S. C. 14 Am. St. R. 510; Masury *v.* Whiton, 111 N. Y. 679; Turnbull *v.* Martin, 37 How. Pr. 20; Goddard *v.* King, 40 Minn. 164; Baltimore, etc., R. R. Co. *v.* Canton Co., 70 Md. 405; Burchell *v.* Marsh, 17 How. (U. S.) 344; Bean *v.* Wendell, 22 N. H. 582; Moore *v.* Barnett, 17 Ind. 349; Carter *v.* Carter, 109 Mass. 306; Portsmouth *v.* Norfolk Co., 31 Gratt. (Va.) 727; Jenkins *v.* Meagher, 46 Miss. 84; McCullough *v.* Mitchell, 42 Ga. 495; Burroughs *v.* David, 7 Ia. 154; Davis *v.* Henry, 121 Mass. 150; York, etc., R. R. Co. *v.* Myers, 18 How. (U. S.) 246; Lester *v.* Callaway, 73 Ga. 730; Appeal of Morgan, 110 Pa. St. 271, S. C. 4 Atl. R. 506. But, compare Williams *v.* Paschall, 4 Dall. (U. S.) 284; Hartshorne *v.* Cuttrell, 2 N. J. Eq. 297; Cleaveland *v.* Dixon, 4 J. J. Marsh. (Ky.) 226; Sumpter *v.* Murrell, 2 Bay. 450.

[5] Schmidt *v.* Glade, 126 Ill. 485.

[6] See, for exceptions, Robertson *v.* McNiel, 12 Wend. (N. Y.) 578; Pulliam *v.* Pensoneau, 33 Ill. 375; Huntsman *v.* Nichols, 116 Mass. 521; Gaylord *v.* Norton, 130 Mass. 74; Osborne *v.* Colvert, 86 N. Car. 170.

[7] Tucker *v.* Page, 69 Ill. 179; Stone

and that an award, final and valid on its face, can not be impeached by extrinsic evidence where there is no charge of fraud or misconduct.[1] There is great conflict among the authorities upon this subject, but there are certain grounds recognized by most of the courts, upon which an award may be set aside. Some of these may be regarded as exceptions to the general rules already stated, while others are entirely independent, being "a law unto themselves." They are thus enumerated and explained by the Missouri Court of Appeals:[2] "There are five grounds, and only five, upon which the courts will set aside an award. These are: 1. The insufficiency of the award. That means that it is not certain, final, or mutual; that it does not embrace all matters submitted to the arbitrators; or that it does embrace matters not submitted to arbitration.[3] 2. A mistake of fact or law apparent on the face of the award.[4] 3. Irregularity of the arbitrators in their proceedings;

v. Atwood, 28 Ill. 30; Bigelow *v.* Maynard, 4 Cush. (Mass.) 317; Withington *v.* Warren, 10 Metc. (Mass.) 431; King *v.* Jemison, 33 Ala. 499; Aldrich *v.* Jessiman, 8 N. H. 516.

[1] Valle *v.* North M. R. R. Co., 37 Mo. 445; Bissell *v.* Morgan, 56 Barb. (N. Y.) 369; Sweet *v.* Morrison, 116 N. Y. 19; Todd *v.* Barlow, 2 Johns. Ch. (N. Y.) 551; Brown *v.* Green, 7 Conn. 536; Ebert *v.* Ebert, 5 Md. 353; Jocelyn *v.* Donnel, Peck (Tenn.), 274, S. C. 14 Am. Dec. 753; Wheatley *v.* Martin, 6 Leigh (Va.), 62; Cobb *v.* Dortch, 52 Ga. 548; May *v.* Miller, 59 Vt. 577; Cochran *v.* Bartle, 91 Mo. 636; Bumpass *v.* Webb, 4 Port. (Ala.) 65, S. C. 29 Am. Dec. 274; Deford *v.* Deford, 116 Ind. 523; Baggalay *v.* Borthwick, 10 C. B. N. S. 61. But, compare Barrows *v.* Sweet, 143 Mass. 316; Hall *v.* Hinds, 2 M. & G. 847; Fain *v.* Headerick, 4 Caldw. (Tenn.) 327; Moore *v.* Luckess, 23 Gratt. (Va.) 160; Dodds *v.* Hakes, 114 N. Y. 260.

[2] Mitchell *v.* Curran, 1 Mo. App. 453.

[3] See, *ante*, § 468. See, also, Richardson *v.* Payne, 55 Ga. 167; Collins *v.* Freas, 77 Pa. St. 493; Porter *v.* Scott, 7 Cal. 312; Blackledge *v.* Simpson, 2 Hayw. (N. Car.) 30, S. C. 2 Am. Dec. 614; Herbst *v.* Hagenaers, 137 N. Y. 290, S. C. 33 N. E. R. 315; Palmer *v.* Van Wyck (Tenn.), 21 S. W. R. 761. In McCall *v.* McCall, 36 S. Car. 80, S. C. 15 S. E. R. 348, it was held that where the award exceeded the terms of the submission the court might rectify the error. See, also, Smith *v.* Paris, 70 Mo. 615. But, compare Carnochan *v.* Christie, 11 Wheat. (U. S.) 446; Commonwealth *v.* Pejepscut Proprietors, 7 Mass. 399; Smith *v.* Cutler, 10 Wend. (N. Y.) 589, S. C. 25 Am. Dec. 580.

[4] Nance *v.* Thompson, 1 Sneed. (Tenn.) 320; Jocelyn *v.* Donnel, Peck (Tenn.), 274, S. C. 14 Am. Dec. 753 and note; Boston, etc., Co. *v.* Gray, 6 Metc. (Mass.) 131; Smith *v.* Railroad Co., 16 Gray (Mass.), 521; Greenough *v.* Rolfe, 4 N. H. 357; Allen *v.* Miles, 4 Harr. (Del.) 234; Smith *v.* Cutler,

as a refusal or neglect to examine witnesses, or in not giving notice of the proceedings.[1] 4. Corruption or misbehavior of the arbitrators.[2] 5. Fraud or concealment of the evidence by

10 Wend. (N. Y.) 589, S. C. 25 Am. Dec. 580; Prescott *v.* Fellows, 41 N. H. 9, S.C. 77 Am.Dec.752; Powell *v.* Riley, 15 Lea (Tenn.), 153; Garvey *v.* Carey, 7 Robt. (N. Y. Sup. Ct.) 286. But the general rule, as already stated, is that mere error in judgment will not ordinarily be cause for setting aside an award, and that where there is a mistake either as to law or facts it must be apparent upon the face of the award in order to cause it to be set aside. In most of the cases above cited there was something to show that the arbitrators had exceeded their power, or made an award different from what they intended and would have made if there had been no mistake; or that the submission required them to follow the law in the particular case, or provided that the award should be approved or reviewed by the court.

[1] See *ante*, § 467. See, also, Lutz *v.* Linthicum, 8 Pet. (U. S.) 165; Dickinson *v.* R. R. Co., 7 W. Va. 390; Elmendorff *v.* Harris, 23 Wend. (N. Y.) 628; Van Cortlandt *v.* Underhill, 17 Johns. (N. Y.) 405; Halstead *v.* Seaman, 82 N. Y. 27; Milner *v.* Noel, 43 Ind. 324; Graham *v.* Woodall, 86 Ala. 313; Vessell, etc., Co. *v.* Taylor, 126 Ill. 250; Hurdle *v.* Stallings, 109 N. Car. 6, S. C. 13 S. E. R. 720; Phipps *v.* Ingram, 3 Dowl. 669; Pepper *v.* Gorham, 4 Moore, 148; *In re* Maunder, 49 L. T. R. 535; Gladwin *v.* Chilcote, 9 Dowl. 550; Samuel *v.* Cooper, 2 A. & E. 752. Where the erroneous rejection of evidence is the ground of attack, the evidence rejected should be set forth. Leslie *v.* Leslie (N. J.), 24 Atl. R. 319; Fowler *v.* Jackson, 86 Ga. 337, S. C. 12 S. E. R. 811. Irregularities in the proceedings may be waived by appearing and taking part without objection, or by ratifying the award. Graham *v.* Graham, 12 Pa. St. 128; Deering *v.* Saco, 68 Me. 322; Woods *v.* Page, 37 Vt. 252; Duckworth *v.* Diggles, 139 Mass. 51, S. C. 29 N. E. R. 221; Maynard *v.* Frederick, 7 Cush. (Mass.) 247; Madison Ins. Co. *v.* Griffin, 3 Ind. 277; Shockey *v.* Glasford, 6 Dana (Ky.), 9; Miller *v.* Brumbaugh, 7 Kan. 343; Hoogs *v.* Morse, 31 Cal. 128; McShane *v.* Gray, 13 Iowa, 504; Reynolds *v.* Roebuck, 37 Ala. 408. The last four cases just cited were cases of ratification.

[2] Hyeronimus *v.* Allison, 52 Mo. 102; Hartford, etc., Co. *v.* Bonner, etc., Co., 44 Fed. R. 151, S. C. 11 L. R. A. 623; Boston, etc., Co. *v.* Gray, 6 Metc. (Mass.) 131; Sisk *v.* Garey, 27 Md. 401; Moshier *v.* Shear, 102 Ill. 169, S. C. 40 Am. R. 573; Smith *v.* Smith, 28 Ill. 56; Burrows *v.* Dickinson, 35 Hun (N. Y.), 492; Smith *v.* Cooley, 5 Daly (N. Y.), 401; Bash *v.* Christian, 77 Ind. 290; Robinson *v.* Shanks, 118 Ind. 125; Shipman *v.* Fletcher, 82 Va. 601; Chism *v.* Schipper, 51 N. J. L. 1, S. C. 2 L. R. A. 544. But in the following cases the irregularity or misconduct was held to be so slight as not to be sufficient cause for setting aside the award. Simons *v.* Mills, 80 Cal. 118; Cutter *v.* Carter, 29 Vt. 72; Flatter *v.* McDermitt, 25 Ind. 326; Noyes *v.* Gould, 57 N. H. 20; Rheem *v.* Allison, 2 Serg. & R. (Pa.) 113; Plummer *v.* Sanders, 55 N. H. 23; Anderson *v.* Burchett, 48 Kan. 153, S. C. 29 Pac. R. 315.

the parties obtaining the award."[1] Where there is no adequate remedy at law equity will set it aside or grant relief upon the ground of fraud, accident or mistake,[2] but, ordinarily, where the objections to the award can be taken advantage of as a defense to a suit thereon, equity will not interfere.[3] In many of the States, where the statute so provides or the submission is under a rule of court, the award may be vacated, for a sufficient cause, upon motion.[4]

[1] Catlett *v.* Dougherty, 114 Ill. 568; Chambers *v.* Crook, 42 Ala. 171, S. C. 94 Am. Dec. 637; Baird *v.* Crutchfield, 6 Humph. (Tenn.) 171; Spurck *v.* Crook, 19 Ill. 415; Strong *v.* Strong, 9 Cush. (Mass.) 560; Beam *v.* Macomber, 33 Mich. 127; Mathews *v.* Mathews, 1 Heisk. (Tenn.) 669; McFarland *v.* Mathis, 10 Ark. 560; Russell on Powers of an Arbitrator, etc., 672, 673.

[2] Baltimore, etc., R. R. Co. *v.* Polly, 14 Gratt. (Va.) 447; Eisenmeyer *v.* Sauter, 77 Ill. 515; Craft *v.* Thompson, 51 N. H. 536; Thrasher *v.* Overby, 51 Ga. 91; Rand, Adm'r, *v.* Redington, 13 N. H. 72, S. C. 38 Am. Dec. 475; Wood *v.* Chicago, etc., R. R. Co., 39 Fed. R. 52; 2 Story's Eq., 675; 2 Pom. Eq., §§ 871, 919; 2 Beach Mod. Eq., § 60; Russell on Powers of an Arbitrator, etc., 697; Adams' Eq., 192, 193. In a bill to set aside an award upon the ground of fraud, partiality or mistake, the facts and objections should be specifically stated; mere general allegations are insufficient. Bowden *v.* Crow, 2 Tex. Civ. App. 591, S. C. 21 S. W. R. 612; Hart *v.* Kennedy (N. J.), 20 Atl. R. 29; Tittenson *v.* Peat, 3 Atk. 529.

[3] Emerson *v.* Udall, 13 Vt. 477, S. C. 37 Am. Dec. 604; Bean *v.* Farnam, 6 Pick. (Mass.) 269; Elliott *v.* Adams, 8 Blackf. (Ind.) 103; Home Ins. Co. of N. Y. *v.* Stanchfield, 1 Dill. (U. S.) 425.

[4] Muldrow *v.* Norris, 2 Cal. 74, S. C. 56 Am. Dec. 313; United States *v.* Farragut, 22 Wall. (U. S.) 406, 414; Wiley *v.* Platter, 17 Ill. 538; Aubel *v.* Ealer, 2 Binn. 582, note; 2 Chitty's Gen. Pr. 121; Russell on Powers of an Arbitrator, etc., 652, *et seq.*; Morse on Arb. and Award, 612. Where it is good as a common law award, but the judgment is invalid under the statute, it has been held proper to merely stay the judgment and proceedings thereunder and to refuse to set the award aside. Kreiss *v.* Hotaling, 96 Cal. 617, S. C. 31 Pac. R. 740.

END OF VOLUME I.

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